SENATE—*Tuesday, May 13, 1986*

(Legislative day of Monday, May 12, 1986)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable MARK O. HATFIELD, a Senator from the State of Oregon.

The PRESIDING OFFICER. This morning, the prayer will be offered by the Reverend Ronald Cadmus, of the Fort Washington Collegiate Church in New York, sponsored by Senator BOB KASTEN.

PRAYER

The Reverend Ronald Cadmus, Fort Washington Collegiate Church, New York, NY, offered the following prayer:

Lift our heads in prayer together.

Lord, as I walked down Fifth Avenue this week and I saw across the street from St. Patrick's Cathedral the form of Atlas with the weight of the world pressing in against him, I was reminded of something more powerful. I went inside that great cathedral and saw, in one of the chapels lining that great nave, the small child we call Jesus, and in his hand he was holding the world.

O, God, too many people in this world bear the weight of this Nation and the world in their hearts and in their consciences. We turn to You today in a way of acknowledging to You that we place our life, our care, our wisdom, and our will into Your keeping.

So today we come closer to You than yesterday, that we might be near to You, with our uncertain tomorrows, for certainly the world is in a precarious state.

We pray that You speak to all of the leaders of our country and all the people whom they serve; speak to their hearts softly, that they might hear You in the farthest corners of their minds.

We pray that You touch all of us gently in Your being, that we might feel Your caress more deeply in our souls, a caress that sustains and leads us and makes us wise.

We pray that You lift up each of our leaders high above themselves, that they might see beyond the fulfillment of their own hope; and we pray that You take us into Your embrace, that we might feel the strength of Your comfort, the power of Your encouragement, the insistence of Your being that will guide us through many troubled storms, that we meet the needs of the people of this country.

Above all, we pray for our President, Vice President, and all those who serve all of the children of this world, so that we might be people who are humble to the point that we seek not only that which is stronger than ourselves but we seek Your wisdom that will make us wise and people of justice.

In Your name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. THURMOND).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 13, 1986.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK O. HATFIELD, a Senator from the State of Oregon, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. HATFIELD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the acting majority leader is recognized.

Mr. McCONNELL. Mr. President, I yield 3 minutes to the distinguished Senator from Wisconsin.

Mr. KASTEN. I thank the acting majority leader.

THE GUEST CHAPLAIN

Mr. KASTEN. Mr. President, I wish to say how pleased and proud I am to have my friend, Ron Cadmus, deliver the opening prayer.

Ron is from the Fort Washington Collegiate Church. He and Dr. Norman Vincent Peale officiated at my wedding a few months ago, and I am particularly pleased and proud to have the opportunity to be in the Senate and to have him deliver the opening prayer, to thank him for his kind and most thoughtful words, and for his continuing leadership not only of the Fort Washington Collegiate Church, but also of a number of us who are beyond the geographical borders of that church; but yet, in a very real way, we continue to look to him for guidance, for inspiration, and for leadership.

SCHEDULE

Mr. McCONNELL. Mr. President, after the two leaders are recognized under the standing order for 10 minutes each, there will be special orders in favor of the following Senators for not to exceed 5 minutes each: the Senator from Florida [Mrs. HAWKINS], the Senator from California [Mr. CRANSTON], the Senator from Wisconsin [Mr. PROXMIRE], the Senator from Connecticut [Mr. WEICKER], and the Senator from Kentucky [Mr. McCONNELL].

There will be a period for routine morning business, not to extend beyond 10:45 a.m., with Senators permitted to speak therein for not more than 15 minutes each.

The Senate will stand in recess between 10:45 a.m. and 2 p.m. in order to hear an address by Anatoly Shcharansky and to meet for the weekly party caucuses.

At 2 p.m., the Senate will resume consideration of S. 1848, the drug export bill. Rollcall votes can be expected throughout the day, and the Senate can be expected to continue into the evening, in order to make progress on S. 1848.

CONGRESSIONAL WELCOME FOR NATAN (ANATOLY) SHCHARANSKY

Mr. McCONNELL. Mr. President, I would like to remind all my colleagues that this morning, at 11 a.m., in the rotunda, the leadership of the House and the Senate will be hosting a welcome for Natan (Anatoly) Shcharansky. All Members are invited to attend the event, and I encourage them to do so, in tribute to this man of courage, an authentic hero to all who believe in the sanctity of human dignity and religious freedom.

In addition to the welcome this morning, tomorrow afternoon, at 2:30 in the Mike Mansfield Room, S. 207, the Senate leadership and Senate Foreign Relations Committee will be hosting a reception for Mr. Shcharansky. The reception will end at 3:30. Senators only are invited.

□ 1010

SENATOR HAWKIN'S SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Florida is recognized for not to exceed 5 minutes.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

The Senator from Kentucky is recognized to read Senator HAWKINS' statement.

Mr. MCCONNELL. Mr. President, Senator PAULA HAWKINS has a statement once again this morning. I will read her statement in her absence and on her behalf.

Her statement this morning is regarding "Mexico Out Front as the United States Major Narcotics Supplier."

Her statement reads as follows:

MEXICO OUT FRONT AS THE UNITED STATES MAJOR NARCOTICS SUPPLIER

Mrs. HAWKINS. Mr. President, the illicit narcotics industry is booming in Mexico, our neighbor to the south. In the past year Mexico has replaced Colombia as the largest supplier of marijuana consumed in the United States. In recent months Mexico has climbed ahead of the "Golden Crescent" countries of Pakistan, Afghanistan and Iran as the largest source of heroin used in the U.S. Mexico produces one-third of the heroin used in the U.S. and is the transit point for another third. As if those statistics were not startling enough, Mexico is the sole source for an unusually potent new kind of heroin called "black tar" which is responsible for the first general increase in heroin consumption in the U.S. in the last five years. And the State Department, in its annual narcotics strategy report for 1986, says that Mexican traffickers are the largest suppliers of illegal amphetamines.

John C. Lawn, administrator of the Drug Enforcement Administration, disclosed in a New York Times interview (May 12, 1986) that his agency had identified 70 "Class One" drug traffickers in Mexico, probably more than in any other single country and a sharp increase over recent years. A "Class One" trafficker is defined as one who runs a network capable of acquiring and distributing many pounds of cocaine and heroin in the U.S. and many tons of marijuana on a regular basis.

I suppose one of the reasons that Mexico's new status as the leading drug supplier disappoints us is that for so many years it was the model of a country trying to do something about its drug problem. As recently as two years ago, Mexican drug enforcement was adjudged "an enormous success" and "the best program in the world." But all that has changed now. Cocaine smuggling, for one example, has escalated to a $1 billion a year business in Mexico. American authorities seized 10,700 pounds of cocaine at the Mexican-California border between October 1 of last year and March 30 of this year. In this six months, drug seizures were three times greater than they had been in the past five years along the entire Mexican border. This is but one statistic in a situation where drug production and trafficking have worsened and enforcement has become lax, in many cases riddled with corruption.

The focal point of the Mexican drug enforcement program had been the crop eradication program where police and special drug fighting teams sprayed herbicides on marijuana and opium poppy fields. The U.S. supplied 60 helicopters and more than a dozen planes of other types for the purpose. And they were being used effectively, with a corresponding cutback in marijuana and opiate production. That too has changed.

DEA Administrator John Lawn told the New York Times that reports reaching his office suggest that "the air fleet is not flying in the areas where cultivation is occurring. They say they are spraying when they are not, or they are spraying water instead of herbicides." Another official made an even more serious charge. He told Times reporter Joel Brinkley that "in some cases they have been spraying fertilizer instead of herbicides." If this is true, that would indicate that bribery and corruption of strategically placed officials surpass anything that we have previously suspected.

The State Department annual survey describes Mexico's record of drug prosecutions as "a dismal picture." And a senior State Department official says narcotics trafficking in Mexico has increased so sharply in the past year and a half that it has "popped off the charts."

Customs Commissioner William von Raab describes the Mexican drug situation as a "horror story, increasing logarithmically" and asserts they are "doing nothing about it." Von Raab blames Mexican government officials, calling them "inept and corrupt."

Law enforcement officials cite as an example of the arrogance of Mexican drug traffickers the terrorism unleashed last November near Vera Cruz when 17 Mexican policemen, including five federal judicial policemen, were tortured and killed. That incident suggests that the traffickers believe they are above the law, and perhaps they have good reason to believe they are. When an American drug agent, such as Enrique Camarena Salazar, can be tortured and brutally murdered by drug traffickers and his killers not be brought to trial, we all have reason to be concerned about the quality of Mexican justice.

Mr. MCCONNELL. Mr. President, I reserve the remainder of my time.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the Democratic leader is recognized.

Mr. BYRD. Mr. President, I thank the Chair.

THE LIBYAN RAID: THE ADMINISTRATION IGNORES THE PRINCIPLES OF SECRECY AND SURPRISE

Mr. BYRD. Mr. President, the administration's military action against Libya on April 14, 1986, in retaliation against Libyan state-sponsored terrorism, has been widely supported in Congress and across the United States. It was a necessary and defensible action. The professionalism of our fighting forces was laudatory. Furthermore, the action has apparently now galvanized our allies into working more closely with us in combating the challenging phenomenon of state-sponsored terrorism. This is apparent in the results of the just-concluded summit meeting in Tokyo.

While I have supported this military action, and while I praise and admire the valor and professionalism, of our fighting forces, I deplore the hemorrhaging of vital military information and planning by various elements of the administration that dominated the news for a full week prior to the raid. The military action was undertaken only after a full week of news reports that quoted administration officials revealing the nature of the mission, against whom the raid would take place, roughly when it would occur, what targets would probably be struck, and which countries might or might not assist in it. Reports indicate that the leaks were so damaging to our planned action that the raid had to be postponed at least once.

This kind of undisciplined chatter might be dismissed as a clever series of trial balloons, designed to affect Qadhafi or our allies, or both, in various ways. However, the paramount goals in any operation must be the safety of our own fighting men and women and the success of the mission itself. We are fortunate that Qadhafi did not act, apparently on the information or at least sufficiently on the information that was readily available to him to complicate the raid, or even to cause us to abort it.

Mr. President, I think it is very important that the historical record concerning this episode in our foreign relations fully show and accurately show the way in which, and the degree to which, the administration through statements by its various spokesmen contributed to the spreading of advance notice of the anticipated Libyan raid literally around the world via the news media, allied governments, and other means during the week preceding the raid.

I ask unanimous consent that a detailed chronology of what the administration spokesmen said to and through these various channels during those several days be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

["The understanding now is that a strike against Libya is in the works. If it comes to that, seldom will U.S. military action have been so widely and publicly advertised in advance."—Sam Donaldson, ABC "World News Tonight" April 9, 1986 (5 days before the raid).]

["By Friday [April 11], says a top intelligence official, 'we knew that we were doomed. Too many people were talking freely about the operation and too many operational details were already out. We had to postpone.' About noon on Friday NSC hastily convened again in the Oval Office and got the President's agreement for a postponement of indefinite duration. Reagan, says one participant, 'was furious. He realized that the operation had to be put off but wanted to make sure that in the future no more leaks will get around.' "—Time, April 21, 1986.]

THE NOT-SO-SECRET RAID AGAINST LIBYA

On April 14, 1986, the United States retaliated against Libyan state-sponsored terrorism by bombing military and terrorist activity support targets in the Tripoli and Benghazi areas.

This military action was undertaken after a full week of news reports that quoted Ad-

ministration officials revealing the nature of the mission, against whom the raid would take place, roughly when it would occur, what targets would probably be struck, and which countries would and would not assist in it, and after our allies had been told of the planned military raid.

The military strike against Libya has been widely supported in the Congress and the United States as a necessary and defensible action.

But the Administration's inability to contain the Nation's most vital military secrets—secrets upon which the lives of the men and women in our armed forces depend and upon which the success of the mission depends—is a different matter.

What follows is a chronology of what the Administration told the news media and allied governments during the week before the raid.

CHRONOLOGY OF EVENTS

Saturday, April 5

1:49 a.m. Berlin Time: A bomb exploded in the La Belle discotheque in West Berlin killing a U.S. soldier and a Turkish woman and injuring 204 people, including 64 Americans.

Sunday, April 6

New York Times: "President Reagan was asked before boarding Air Force One for the return trip to Washington if he would 'hit' Libya and responded, 'No comment.' " (New York Times, April 7.)

Secretary of Defense Caspar Weinberger: "We don't have the hard evidence [against Qaddafi] * * * but when there is evidence, we wouldn't hesitate to act for a moment." (NBC "Nightly News," April 6.)

Monday, April 7

U.S. Ambassador to West Germany Richard Burt: "There are very clear indications that there was Libyan involvement [in the Berlin bombing] * * *" When asked whether he would like to see the President take military action against Qaddafi, Burt replied: "I'm not going to close the President's options. * * * He's studying this issue right now. * * *" (NBC "Today Show," April 7.)

Washington Post: "The White House yesterday [April 7] privately rebuked Richard Burt, U.S. Ambassador to West Germany, for saying in a television interview that the United States has clear indications of Libya's involvement in the weekend bombing of a West Berlin nightclub. U.S. officials confirmed, however, that Burt's statements were correct. * * * The officials, who declined to be identified, said Burt had been warned to be more circumspect in public statements, not because he had spoken incorrectly but because, as one official put it, 'he got too far out in front of what the administration wants to say publicly at this point.' " (Washington Post April 8.)

CBS "Evening News": "Reagan Administration officials say they have intelligence reports strongly linking the Libyan People's Bureau in East Berlin with the bombing of the La Belle discotheque in West Berlin. The evidence includes intercepted messages dispatched from Libya to its operatives in East Berlin. Top U.S. officials acknowledge that detailed military contingency plans for retaliation already exist. Said one source, they involve five targets in Libya." (White House Correspondent Lesley Stahl, CBS "Evening News," April 7.)

ABC "World News Tonight"; "U.S. intelligence sources say that after the [Berlin] bombing, there were messages from Libya to its embassy in East Berlin which indicated clear knowledge of details of the terrorist attack and which in essence offered praise for a job well done." (National Security Correspondent John McWethy, ABC "World News Tonight," April 7.)

Wall Street Journal: "U.S. officials are putting out the word that they are laying the groundwork for possible retaliatory actions against Libya for its suspected involvement in the bombing of a West Berlin discotheque. * * * U.S. officials said they won't decide on any of several possible retaliatory measures now being studied by President Reagan until investigators in Berlin make more progress * * * Options that U.S. officials have discussed include striking unmanned planes on an airfield, Libya's two SAM-5 missile sites, or missile-storage area * * * Other retaliatory options are aimed at striking at the heart of Libya's economy, by bombing oil lines or transportation." (Wall Street Journal, April 8.)

Tuesday, April 8

White House Press Briefing: "Q: So, just to reiterate, you have not now at this time made a conclusion as to the extent of Libyan involvement in either the two incidents of last week? [White House deputy press secretary Larry Speakes]: That's right." (White House afternoon press briefing, April 8.)

Wall Street Journal: "Reagan and his advisers are united in wanting to respond militarily against Qadhafi * * * but haven't agreed on a time or place to strike back, a senior Administration official said." (Wall Street Journal, April 9.)

New York Times: "One State Department official, who was openly skeptical about the evidence used to link Libya to last December's Rome and Vienna airport attacks, said today [April 8] that 'I have absolutely no doubt this time. We have the goods.' " (New York Times, April 9.)

CBS "Evening News": "Forty-eight hours after the bombing in West Berlin the Reagan Administration had reached a consensus for military retaliation against Libya. But, officials are still trying to decide exactly what to do and when. Sources tell CBS that the evidence, most of it from communications intercepts, seems to implicate Libya beyond much doubt * * * What are the options? The easy targets are on the coast—the Libyan missile battery already hit during the operation in the Gulf of Sidra, a submarine base, other port facilities and artillery positions. More risky: terrorist training camps. Military planners say daylight action inland would probably mean the loss of some pilots and aircraft. But the White House believes there is public support as do many in Congress. (White House Correspondent Bill Plante, CBS "Evening News," April 8.)

Wednesday, April 9

Events of the Day That Were Known at the Time

USA Today: "By 3 p.m., two U.S. aircraft carrier battle groups were ordered to remain in the Mediterranean." (USA Today, April 10.)

New York Times: "Several of the [Administration] officials said sensitive information was being shared with West Germany, Britain, France, Italy and a few others, but that not all were being shown the same raw evidence." (New York Times, April 10.)

CBS "Evening News": "According to a highly-placed source President Reagan has approved another possible military strike against Libya. * * * The White House denied rumors today that a military response was already underway, but a well-placed intelligence source said that a military response has been approved." (White House Correspondent Lesley Stahl, CBS "Evening News," April 9, and USA Today, April 10.)

ABC "World News Tonight": "The understanding now is that a strike against Libya is in the works. If it comes to that, seldom will US military action have been so widely and publicly advertised in advance." (Sam Donaldson, ABC "World News Tonight," April 9.)

Asked directly whether he had already authorized military retaliation against Libya, the President said: "This is a question that, as I say, is like talking about battle plans or something." Stating that the Administration was still looking for proof, he concluded that "if there's identification enough to respond, then I think we'd respond." (President Reagan, News Conference of April 9. Transcript in Washington Post, April 10.)

Events of the Day That Were Subsequently Reported

Washington Post: "At about the middle of last week [April 6-12], officials from Reagan's National Security Council contacted their counterparts in Thatcher's Cabinet Office. The Americans said that the Administration had decided to take military measures against Libya, and wanted both British backing and approval for use of Royal Air Force bases where U.S. Air Force F111s and some aerial refueling tankers are stationed. * * * Her staff requested that the NSC provide specific information on the types of bombers that were to be used, and on the intended targets." (Washington Post, April 16.)

New York Times: "The discussions [with the British] began late on Tuesday [April 8], almost a week before the raid. * * *" (New York Times, April 16.)

On Wednesday, April 9, five days before the raid, the President was authoritatively reported to have approved in principle the decision to retaliate militarily against Libya.

Washington Post: "Sources said that a formal national security decision directive was signed last Wednesday [April 9] in which Reagan approved an attack on Libya 'in principle'. * * * By Wednesday [April 9]. * * * Shultz and Poindexter were ready with their recommendation for a military strike. Reagan approved the decision in principle at a National Security Council meeting in the Oval Office after hearing a recommendation from Adm. William J. Crowe, Jr., chairman of the Joint Chiefs of Staff, who called for adding firepower to U.S. forces before any strike was made." [Washington Post, April 15.]

Sam Donaldson on ABC "Nightline," April 14: "Officials here [Washington, D.C.] say the President decided on a military option at the middle of last week, say Wednesday, Wednesday morning, and from that moment on, they insist there was never any doubt that it would be used." (ABC "Nightline," April 14.)

Thursday, April 10

Events of the Day That Were Known at the Time

NBC "Today Show": "Administration officials say that intense planning is under way for retaliation against Libya. At his news conference the President only hinted at it. * * * And when given the facts the President did not deny that he has already ordered military retaliation. Afterwards officials said that omission was very significant and said pointedly that when the time is right the United States will respond."

(White House correspondent Andrea Mitchell, NBC "Today Show," April 10.)

Washington Post: "The United States, * * * now has 'indisputable evidence' that Libyan leader Muammar Qaddafi was behind the [Berlin discotheque] attack, according to NATO commander Bernard W. Rogers. * * * Gen. Rogers, speaking in Atlanta Wednesday [April 9], said, 'We have indisputable evidence. * * * I can't tell you how we get it. But it's there.' " (Washington Post, April 11.)

At the White House, deputy press secretary Larry Speakes was asked if reporters could assume that Rogers "knows what he is talking about." Speakes replied: "I'm sure you can." (White House afternoon press briefing, April 10.)

New York Times: "An Administration official said that Libyan military sites are the prime options under consideration for retaliation, and that among the key possibilities are Libyan air bases near the coast. * * * The official said that coastal electronic listening posts, including early-warning radar sites as well as units that pick up airplane and ship traffic, are also targets. * * * Although oil fields and oil depots are also under construction, one United States official said that destruction of such sites could create problems for the United States because friendly nations, particularly Italy and West Germany, buy oil from Libya. Moreover, a number of Americans are believed working in or near these sites, despite Mr. Reagan's recent order for Americans to leave Libya." (New York Times, April 11.)

New York Times: "Administration officials conceded that, if President Reagan orders a military strike, 'clearly the surprise won't be there.' The official added * * * 'The Libyans know as well as we do what the major targets are.' " (New York Times, April 11.)

NBC "Nightly News": "At the President's direction the Pentagon is making final plans for a retaliatory strike against Libyan military bases and perhaps industrial sites. That according to defense officials who told NBC News that the President has approved in principle an attack of short duration which would destroy many targets. The sources said the carriers *Coral Sea* and the *America*, currently within 24 hours of the Libyan coast, would not be ordered into action until the President reviews the battle plan with his top advisers. They would include Vice President Bush, who is due back from the Middle East late Saturday, and Defense Secretary Weinberger who returns from Asia Sunday.

* * * Defense officials said the President's military options are all keyed to the four main air defense missile sites along the Libyan coast. Those batteries would have to be destroyed first. Only then would bombers be sent to attack three large military airfields. The F-111 bomber is one of the weapons the President could use together with carrier jets. The F-111 is based in Britain and it is not known if the British government would go along with that use of its territory. But the largest burden of the airstrike would go to the attack jets on the two carriers. Pentagon sources said they would be used against Libyan naval facilities and military bases along the Libyan coast. * * *

* * * It is not clear tonight whether the attack plan to be presented to the President will include a strike against Libyan oil facilities. One Pentagon source said that would expose attack jets to more ground fire than is acceptable, and there is that same concern with striking Libya's many terrorist camps—the majority of which are in the Libyan interior out of safe bomber range. But one official said there are several near shore which could be attacked.

* * * Those are most of the options for the President and according to defense officials, it is no longer a question of whether he will employ one or all of them, but when." (Fred Francis at the Pentagon, NBC "Nightly News," April 10.)

Friday April 11

Events of the Day That Were Known at the Time

NBC "Today Show": "The issue isn't if the U.S. will strike, but when." (Bryant Gumbel, NBC "Today Show", April 11.)

NBC "Today Show": "Defense department sources say the plan would be for a quick strike that could hit the following targets. Military bases near the coast to knock out missile sites and missile storage areas. Military airfields near Tripoli, to hit unmanned jet fighters on the ground. * * * The goal is to strike as many targets as possible as close to the coast to reduce the danger to American aircraft." (Correspondent Jamie Gangel, NBC "Today Show," April 11.)

Reuters: "Pentagon officials said yesterday [April 11] the *Coral Sea* and *America*, carrying 170 planes and escorted by battle fleets of more than 10 ships each, had edged closer to Libya." (Reuters, April 12.)

New York Times: "[White House chief of staff Donald Regan] was asked by reporters * * * whether there now was 'indisputable' evidence linking Libya to the West Berlin disco attack. 'As far as most people are concerned, yes,' Mr. Regan replied * * * 'We haven't reached a final conclusion, but we're coming close.' " (New York Times, April 12.)

Events of the Day That Were Subsequently Reported

AP: "On Friday, when the ships were still about a day's sail from the Gulf of Sidra * * * one Pentagon source said, 'There doesn't seem to be anything imminent at this point.' " (AP, April 13.)

Washington Post: "According to French and American sources, the United States first broached the question of overflight rights with France on Friday, April 11, via the military attache's office in the U.S. Embassy here [in Paris]." (Washington Post, April 24.)

Washington Post: "[Paris daily] Le Monde said that Reagan sent a second private message to Mitterrand on April 11, announcing his intention of using the F111s to attack 'terrorist camps' in Libya and requesting overflight rights." (Washington Post, April 29.)

Saturday, April 12

Events of the Day That Were Known at the Time

UPI: " 'As part of our continuing consultations on the threat of terrorism, Ambassador Vernon Walters, the U.S. representative to the United Nations, has undertaken a mission to Europe,' said State Department spokesman Deborah Cavin. 'He is now in the United Kingdom, where he has met with Prime Minister Margaret Thatcher and he will be visiting several other countries in the next few days.' " (UPI, April 12.)

New York Times: "Administration officials speculated that the Walters trip placed in abeyance, at least for the moment, a retaliatory strike against Libya, but officials declined to rule out a raid even in the next 48 hours." (New York Times, April 13.)

AP: "The [British] Mail on Sunday newspaper said Mrs. Thatcher had 'cleared the way for President Reagan to use British bases to launch a massive new air attack on Libya.' " (AP, April 13.)

AP: "Speculation * * * that the United States might be planning to use its F-111 fighter-bombers based in eastern England for a punitive strike against Libya * * * was heightened by the arrival Saturday [April 12] of several KC-10 tanker planes at the U.S. Air Force base in Mildenhall, eastern England. The KC-10, a military version of the DC-10, is capable of in-flight refueling and could be used to enable up to 40 F-111s to make roundtrip flights between Britain and Libya." (AP, April 13.)

AP: "Italian Premier Bettino Craxi told reporters Saturday [April 12] in Milan * * * 'I don't believe there will be a military intervention there [Libya] before Monday,' the day of the Common Market meeting." (AP, April 12,)

NBC "Nightly News": "By Monday, the diplomatic lobbying tour will be complete, and Administration sources indicate that means a strike could come as early as Tuesday. * * * Administration sources say the president is committed to a retaliatory strike, but might be willing to hold off if European allies agree to strong political and economic sanctions. Short of that, said one official, it's just a matter of time until the president picks a plan and gives the go-ahead." (Correspondent Jamie Gangel at the White House, NBC "Nightly News," April 12.)

Events of the Day That Were Subsequently Reported

Washington Post: "After consulting conservative Prime Minister Jacques Chirac by telephone, Mitterrand decided to reject the U.S. request [for overflight rights], and the French refusal was communicated to Washington the following morning [Saturday, April 12]." (Washington Post citing Le Monde, April 29.)

ABC "Nightline": "Officials here [Washington, DC] say * * * General Walters * * * was not sent to try to solicit allied support for this * * * but had been sent to inform the allies that a military option would be used." (Sam Donaldson, ABC "Nightline," April 14.)

Washington Post: "By the time Walters arrived Saturday, most of these details had been ironed out. His meeting with Thatcher, along with [Foreign Secretary Geoffrey] Howe and Defense Secretary George Younger, sources said, concentrated primarily on the 'public presentation' of the attack after the fact, including the extent to which evidence could be publicly revealed and the legal justification for it." (Washington Post, April 16.)

New York Times: "According to Spanish sources here [Washington, DC] and in Madrid, Mr. Walters, at a previously undisclosed meeting with Mr. Gonzalez on Saturday [April 12], hinted at the possibility of overflights or use of the bases in the event of a hypothetical American military action against Libya. Mr. Gonzalez, the sources said, gave a thoroughly discouraging response about both." (New York Times, April 16.)

Sunday, April 13

Events of the Day That Were Known at the Time

Deputy Secretary of State John Whitehead said: "* * * prospective military action is something that only the President will

decide on. He has not yet made that decision. * * *" "No, there really isn't a time table, but * * * the time is getting short." (CBS "Face the Nation," April 13, and New York Times, April 14.)

Director of the State Department's Office of Counter-Terrorism Robert Oakley said: "I can't tell you exactly what General Walters is talking about, but he is indeed consulting our allies." (ABC "This Week With David Brinkley," April 13.)

Walters met with West German Chancellor Kohl and Foreign Minister Genscher Sunday morning and that evening with French Prime Minister Chirac. (Washington Post, April 14.)

Jiji (Tokyo) Press Service: "When they met at the Presidential Retreat of Camp David * * * last Sunday, Reagan hinted the possibility of attacking Libya, [Japanese Prime Minister] Nakasone said at a plenary session of the House of Councillors. Reagan said that the United States has firm evidence linking Libya to the recent bombing of a West Berlin nightclub * * * On Wednesday [April 16] Deputy White House press secretary Larry Speakes said Japan expressed its support for U.S. attacks against Libya prior to * * * [the] air raids on Tripoli and Benghazi. But this was denied by Nakasone Thursday." (Jiji [Tokyo] Press Ticker Service, April 18)

NBC "Nightly News": "Administration officials say the President is moving toward a decision about whether to make a retaliatory strike agains Libya; and White House officials confirm the President will have a special National Security meeting tomorrow to evaluate the situation. * * * Today, the President conferred with Vice President Bush and Secretary of State Shultz, both of whom are believed to favor a military strike. Noticeably absent from the Camp David meeting was Defense Secretary Weinberger, who is believed to oppose such action." (Jamie Gangel at the White House, NBC "Nightly News," April 13.)

Events of the Day That Were Subsequently Reported

Washington Post: "The [Le Mondel] newspaper said the White House then sent another urgent message to Mitterrand asking him to reconsider [France's decision made Saturday, April 12, to refuse American overflight rights]. The French refusal was confirmed at a meeting on the morning of April 13 between Mitterrand, Chirac, and Foreign Minister Jean-Bernard Raimond." (Washington Post, April 29.)

New York Times: "Mr Walters said the United States was ready to act," said a ranking aide of the American envoy, and Kohl told him, "Force is not our method." * * * A senior adviser to the Chancellor said Mr. Kohl was "furious" when he read that Reagan Administration officials had described him as willing to condone military action against Libya in private while publicly opposing such a step. "He said nothing like this," the adviser insisted. (New York Times, April 25.)

New York Times: "Mr. Craxi's aides, too, were shocked to hear him described by Washington officials as having privately endorsed the American raid." (New York Times, April 25.)

The April 21 issue of Newsweek, which was available on newsstands before the raid, contained a lengthy lead article on the possibility of military action against Libya. Using accumulated leaks from Administration officials, it offered a detailed and remarkably accurate analysis not only of what had happened, but also of what would happen.

This time the casus belli was the La Belle discotheque bombing in West Berlin. The President's counselors said they had worked up an "indisputable" trail of evidence connection Libyan agents to the murderous blast. Two U.S aircraft carriers took up positions within striking distance of Libya. Reagan suggested he was only waiting for clear battle conditions and a complete dossier on the Berlin case before striking.* * *

With the USS *Coral Sea* and the USS *America* both in the Mediterranean, one plausible scenario was that Reagan would send Navy jets from the carriers to bomb airfields, missile batteries, radar towers or other military targets along the Libyan coast. * * * United Nations Ambassador Vernon Walters also left on a trip to London, feeding speculation that Washington might try to launch a raid with U.S. Air Force FB-111 bombers based in Britain. The President's advisers were leaning against two other options: trying to take out Libya's oilfields or hitting suspected terrorist training camps.* * *

* * * This time, senior U.S. officials said, the Joint Chiefs of Staff laid out a full range of military options for Reagan and the National Security Council immediately after the Berlin bombing. Over the next three days new reconnaissance photos were reviewed and the list of targets was narrowed; then Reagan approved an attack "in principle."

* * * Pentagon officials were determined to stick to the criterion of "proportionality"—and they read that as meaning an attack on limited targets such as the radar array around Tripoli. Then, according to Defense Department officials, the President and his other advisers decided to consider larger targets such as Libya's airfields. The military brass went back to the drawing board.* * *

Of all the options, the most likely to meet Reagan's guidelines was sending jets from the carriers to hit Libyan military positions.* * * The Administration had also not ruled out a longer range hit. From the start the Pentagon had liked the option of dispatching the British-based FB-111s, which can move fast, fly low and carry a heavy bomb-load. At first, according to British officials, Prime Minister Margaret Thatcher was cool toward the proposal. But the sources said she warmed up after U.S. official let the British see their full file on Kaddafi's links to the La Belle blast.* * * In another sign the Administration might be leaning toward the Britain scenario, several U.S. tanker aircraft, which could be used for inflight refueling, took wing for American air bases in the United Kingdom.

The President's advisers rejected other possibilities as too dangerous. The CIA had identified some three dozen camps where it suspected the Libyans of training terrorists. But top U.S. officials argued that strikes on those targets might also hit civilians. Senior planners pointed out that an attack on Libyan oilfields, pumping stations and loading docks could endanger innocent oil workers, including Americans and Europeans.* * *

* * * Senior officials in Washington echoed reports that U.S. intelligence had intercepted messages between Tripoli and the Libyan People's Bureau in East Berlin. In late March, they said, Tripoli instructed the bureau to carry out an undisclosed "plan." On April 4 the bureau informed its capital that the operation would take place soon. Hours later—after the attack on the discotheque—the Libyans in East Berlin reported that they had executed the plan. Then on April 6 Tripoli exhorted other People's Bureaus to follow East Berlin's example. * * *

In the campaign to rally allied support, the State Department sent cables on Kaddafi's links to terrorism to major West European capitals. But only the British were shown raw transcripts of the intercepted Libyan messages. The other allies saw paraphrases. That appeared to explain why the West Germans sounded circumspect about the evidence in the La Belle case, even though they verified the thrust of Washington's allegations. * * *" ("Targeting a 'Mad Dog,'" Newsweek, April 21, 1986—released April 13, 1986.)

Monday, April 14

The Day of the Raid

NBC "Today Show": "A high official said in Moscow this morning the Soviet government is in contact with Washington in efforts to prevent a U.S. attack on Libya. * * * At the White House, President Reagan meets today with his top advisers in what could be a crucial meeting on the Libyan crisis." (News Anchor John Palmer.) "Many observers believe—even those who originally thought that a military response would be a mistake—that the President has now talked so tough that he almost has to do something, in order to preserve American credibility on this issue." (White House Correspondent Andrea Mitchell, NBC "Today Show," April 14.)

12:13 p.m., EST: 18 US F-111s depart from Britain.

4 p.m., EST: The President consults with Congress for the first time as top congressional leaders are told of the military operation which is already in progress. (Washington Post, April 15.)

Representative Robert Michel, who attended the briefing, said: "* * * we got a complete briefing on the nature of the strike and how it was to be deployed and the purpose for taking that kind of action. * * * There certainly were some serious questions asked by members, and I think rightfully so, particularly for those of us who, while hearing reverberations that there might be some kind of strike of this nature but not knowing for use and having not been counseled or asked for our comments before that meeting * * *" (ABC "Nightline," April 14.)

Asked whether this constituted proper consultation with Congress under the War Powers Act, Representative Dante Fascell, who also attended the briefing, responded: "Well, we were informed of a decision." (ABC "Nightline," April 14.)

6:30 p.m. ABC "World News Tonight": "A debate at the highest level of the Reagan Administration raged right through the weekend about how best to deal with Qadhafi. Officials say arguments were so intense that the President late last week was unwilling to order a military strike until differences among his top advisers could be narrowed. They now have, officials say, and plans have been set into motion to order a military strike.

One major reservation expressed late last week was the need to more fully consult with America's allies. Over the last two days, U.N. Ambassador Vernon Walters has done that consulting. * * * There were other concerns about not having enough military muscle on the scene. Two aircraft carrier task forces with 160 planes on board are standing by just north of Sicily—a quick run

from Libya. Additional KC-10 tankers, used in air-to-air refueling, have been flown to bases in Britain—available for duty should the Administration decide to use Air Force F-111s in a strike.

Another concern was the lack of secrecy. Today Defense Secretary Caspar Weinberger issued a tough new order for no one to talk about details of ship or plane movements. Other reservations, many of them said to be raised by Weinberger, include concern that civilian casualties—Libyan, European, and American—be minimized and that American pilots be exposed to the lowest possible risk. Though differences among high-level advisers still exist, officials say once the President signed off on a plan for action the debate stopped. Now all attention is focused on making sure the plan works." (National Security Correspondent John McWethy, ABC "World News Tonight," April 14.)

7:00 p.m. EST: American planes bomb Libya.

9:00 p.m. EST: President Reagan discusses the attack on Libya in nationally televised address.

11:30 p.m. EST: On ABC "Nightline," Ted Koppel declared: "It has been in the wind for days. For a time, in fact, the move toward military action was so blatant that it looked like a bluff." (ABC "Nightline," April 14.)

The Aftermath

A statement released by the office of Canadian Prime Minister Mulroney: "The government of Canada has been fully consulted by the United States all along and was notified in advance of its intentions with respect to Libya." (NEWSCAN [newsletter of the Canadian Embassy], week of April 18, datelined Ottawa, April 15, 1986.)

White House morning press briefing:

Question: "Was his [President Reagan's] decision [made Wednesday, April 9] at all contingent on diplomatic and congressional consultations? Or was the military option, once chosen at mid-week, to go toward irrespective* * *?"

White House deputy press secretary Larry Speakes: "It was to go forward, because we sent General Walters on Saturday and Sunday and Monday to visit with the allies. They were told that the President had decided on the military option, and we'd go from there." (White House morning press briefing, April 15.)

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Democratic leader has 6 minutes remaining.

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Arkansas. How much time would he like to have?

Mr. BUMPERS. The leader has 6 minutes remaining?

Mr. BYRD. I have 6 minutes.

Mr. BUMPERS. I would like as much as possible. I do not want to infringe on the leader's time.

Mr. BYRD. Mr. President, I shall have an opportunity later in the day to make the comments that I had intended to make at this time.

I yield to the distinguished Senator from Arkansas the remainder of my time.

The PRESIDING OFFICER. The leader now has 5 minutes remaining.

Mr. BUMPERS. I am not sure the Chair is being entirely partial in this little dialog.

Mr. President, I thank the leader for yielding the time to me.

S. 2439—COMPETITIVE LEASING ON FEDERAL LANDS FOR OIL AND GAS

Mr. BUMPERS. Mr. President, the purpose of my rising this morning is to say that I am introducing another bill dealing with competitive leasing on Federal lands for oil and gas. I introduced a bill last year to try to change the lottery system that we now use to an all-competitive systems. I have been fighting this battle for 7 years.

The permanent scar on the body politic remains. At a time when we are trying to deal with deficits, GAO has said we are losing in the vicinity of $200 million a year under an anachronistic system which, if it ever served any purpose at all, has long outlived that purpose.

Mr. President, I want to describe the system that I am trying to correct. Right now there are well over 500 million acres of Federal lands in this country. The Bureau of Land Management leases this land on behalf of every agency, whether it is the Forest Service or BLM land. Unless this land is under what is known as a known geological structure, the BLM puts it in a lottery. Anybody who wants to, can pay $75 to put his name in the lottery, and once a month, they turn the squirrel cage and pick somebody's name out and, say, it is a 1,000-acre tract of land that they are bidding on, whoever's name is pulled out of the squirrel cage gets that 1,000 for $1 an acre.

That land may be almost certain to be productive of oil and gas or it may be wildcat land.

They have three systems. That is one system.

Another system is called "over-the-counter system." You walk into the Bureau of Land Management and you say to them, "There is a 1,000-acre tract of land out here in which I have an interest. Has anybody else demonstrated an interest in it?" They say, "No, we have no record that anybody else is interested in leasing that land." If nobody else has demonstrated an interest in it, and that potential lessee can get the U.S. Geological Survey to say that is not a known geological structure, he can give them a $1,000 check or $1 an acre and walk out with a lease on 1,000 acres.

What is a known geological structure? The U.S. Geological Survey, in hearings we held in 1980, said a known geological structure is anything that has a producing oil or gas well within a mile of it.

What if you had two gas wells 5 miles apart and it was almost certain that everything in between them was full of gas, too? Well, anything outside the 1-mile limit of the two producing wells could be leased for $1 an acre by the first person who walks in and asks for it.

Now, if two or three people ask for it at the same time, then the tract of land goes into the lottery system and the applicants take their chances.

I have said on this floor a dozen times that I am absolutely convinced that this lottery system we use to lease Federal lands is a violation of the criminal laws of this Nation.

I have written to the Attorney General time and again asking him for a ruling whether or not this lottery is a violation of our criminal laws. I never have been able to get a ruling on it.

I can tell you that under the laws of Arkansas it is a violation of the law but simply as long as the Federal Government operates the lottery, Federal law supersedes State law and there is very little we can do about it.

The third system we use is, if there is a tract of 1,000 acres and that 1,000 acres is within 1 mile of a producing well, then the BLM does what it ought to do in every instance: It advertises it on a competitive basis and everybody submits sealed bids.

□ 1020

How did I get interested in this issue from a State like Arkansas, rather than Wyoming or Idaho? We have about 4 or 5 million acres of Federal lands in my State and 75,000 of it is a military reservation called Fort Chaffee.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. BUMPERS. Mr. President, I am reluctant to do this, but I do not see anybody else wishing to speak, so I ask unanimous consent that I be granted an additional 4 minutes.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Arkansas is granted an additional 4 minutes.

Mr. BUMPERS. Mr. President, Fort Chaffee, AR, is 75,000 acres surrounded roughly by 500 producing gas wells. The only reason there were no gas wells in Fort Chaffee was because, until 1976, it was against the law to lease a military reservation. So here you had this 75,000 acres blocked out, surrounded by 500 gas wells. And what did BLM do? Why, Texas Oil & Gas walked in there and said, "We will give you $1 an acre for 33,000 acres of this land." They said, "Pay us." And they got the land for $33,000 or $1 per acre.

I squealed like a pig under a gate. Some people in Arkansas took it upon themselves to appeal the decision and

went all the way to the Supreme Court. Last year, fortuitously, the Supreme Court declared that sale illegal and outside the authority of BLM and told BLM to release the land.

But here is the real clincher: Because I made so much noise about the sale—and why would I be interested? Because the State of Arkansas gets half the money—but because I raised so much cain about it, they leased another 24,000 acres at Fort Chaffee adjoining the 33,000 acres.

They leased that the following year on a competitive basis. What do you think it brought? $1,705 an acre. And if I had not squealed like a banshee, it would have gone for $1 an acre. And right now, they are proposing to lease thousands of acres of land in the Ouachita National Forest, Elgin Air Force Base, and Lord knows where else, for $1 an acre, land that ought to be bringing much, much more than that.

Not only are we losing money—that is really not my primary motivation for trying to change this anachronistic law—the reason I am trying to change it is because this system is absolutley open for rife fraud and it is being defrauded constantly by 250 leasing corporations or filing services that have sprung up in this country in the last 10 years. They get people to send them money to submit a bid for them. They say, "send us $125 and we will bid for you." So they send them the bid for $75 and put $50 in their pocket and say, "this is red hot land." And it may be and it may not be.

But the point is the only sensible way for Government to operate is the way everybody else operates, and that is on a competitive bid basis.

I wish I had more time, Mr. President, because I would like to describe some of the other abuses. When I first got into this, they had names in that squirrel cage of the lottery of people who were dead and people who did not exist.

I called the U.S. attorney in Denver. He told me he had so many plea bargainers in his office that he had to bring in more chairs. We have had to stop this system time and again because of fraud. And they say, "oh, we have got it fixed now." It used to be you could bid for $10. They say, "we have got it fixed now. We have moved that up to $35." More fraud, and they moved it up to $75.

The amount it takes to bid has nothing to do with whether you can defraud the system or not. But I will tell you something else: In this day and time when we are cutting revenue sharing, when we have cut State turnbacks from $63 billion a year to $17 billion a year, State and local governments need this money. They do not get anything of the $75 application fee. But if it is bid on a competitive basis, they get half of the bonus bid.

The National League of Cities, the National Association of Counties, and everybody ought to be up here lobbying for this bill.

Mr. President, now that I have described the current system and its problems, let me turn to the bill I am introducing today. This is a competitive oil and gas leasing bill drafted by the Department of the Interior. As every Member of this body knows, I have long been a proponent of the need to change the current leasing system, which I believe is outmoded, susceptible to fraud and manipulation, and not designed to provide the Government with a fair return. I referred earlier to the legislation I introduced at the beginning of this Congress, S. 373, which would establish an all-competitive system. In the interest of advancing the debate on this issue, I am today introducing legislation that would create a two-tiered system of onshore oil and gas leasing. This legislation was drafted by the Department of the Interior and is virtually identical to an Interior Department draft which has been available to interested Senators and industry representatives for several months.

The Interior draft would create a two-tiered system for onshore oil and gas leasing which can be summarized as follows: All Federal lands subject to oil and gas leasing would be offered first under a competitive system which would require minimum bids or $35 per acre. Parcels receiving at least one bid of $35 or higher would be leased to the highest bidder. Parcels receiving no bids or bids below the minimum would then be available for leasing in the second—noncompetitive—Tier for 1 year. If these parcels are not leased within the year they again become available only under the competitive system

The primary virtue of this legislation, in my view, is that it eliminates the use of the KGS [known geological structure] as the determinant of eligibility for competitive leasing and substitutes a market-based test. The lottery system—or the over-the-counter system for lands which have not been leased previously—is preserved for lands which the market has determined to be worth less than $35 an acre.

The royalty payment under this proposal would be fixed at 12½ percent, and the lease term would be extended to 10 years. Rental payments would be handled as under existing law. These lease terms would be the same for both competitive and noncompetitive leases.

The Government's authority to combat fraudulent practices involving the onshore oil and gas leasing system would be enhanced under this legislation. The Secretary would have new authority to disapprove lease assignments of less than 640 acres in order to prevent "40 acre merchants" from marketing small parts of leases to the public. Specific authority to combat fraud, including civil and criminal penalties, is provided for regulatory and enforcement agencies.

Mr. President, this draft legislation does not represent the ideal oil and gas leasing system—obviously I would prefer to do away with the lottery system altogether—but I think that it is a responsible proposal and a good starting point for debate. Many of the problems which the oil and gas industry has raised regarding earlier proposals are addressed in this legislation. I stand ready to listen to and work with any and all interested parties to achieve agreement on a leasing bill. It is clear that support for a more competitive system is growing. The House Interior Committee is interested in working on leasing legislation, as is the Department of the Interior. Now, at a time when leasing activity is relatively slow, we have an excellent opportunity to make some changes in the existing system which will be of benefit to all in the future. I urge my fellow Senators to take a close look at this legislation and to lend competitive leasing their full support. We cannot allow the current abominable system to continue.

I ask unanimous consent that the text of the bill and a section-by-section analysis, both drafted by the Department of the Interior, be printed in the RECORD following my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2439

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Onshore Competitive Oil and Gas Leasing Act of 1986".

SEC. 2. (a) Section 17(b)(1) of the Act of February 25, 1920 (30 U.S.C. 226(b)(1), is amended to read as follows:

"(b)(1) All lands to be leased which are not subject to leasing under paragraph (2) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 5,120 acres, which shall be as nearly compact as possible. A lease shall be conditioned upon the payment of a royality of 12½ per centum in amount or value of the production removed or sold from the lease. The Secretary shall accept the highest bid from a responsible qualified bidder which is $35 or greater per acre, without evaluation of the value of the lands proposed for lease. All bids for less than $35 per acre shall be rejected. Lands for which no bids are received or for which the highest bid is less than $35 per acre shall become available for leasing under subsection (c) of this section for a period set by the Secretary not to exceed one year after the lease sale.".

(b) The first sentence of section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended to read as follows:

"(c)(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding.".

(c) Section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)), is amended by adding a subsection to read as follows:

"(c)(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than $35 per acre, and (ii) for which, at the end of the period prescribed by the Secretary under subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section.

(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is cancelled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.".

(d) The third sentence of section 17(d) of the Act of February 25, 1920 (30 U.S.C. 226(d)), is amended by inserting "not less than" after "minimum royalty of" and before "$1 per acre".

(e) The first sentence of section 17(e) of the Act of February 25, 1920 (30 U.S.C. 226(e)) is amended to read as follows: "(e) Leases issued under this section shall be for primary term of ten years.".

SEC. 3. The third sentence of section 30(a) of the Act of February 25, 1920 (30 U.S.C. 187a) is amended to read as follows: "The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment—(1) of a separate zone or deposit under any lease, (2) of a part of a legal subdivision, or (3) of less than 640 acres outside Alaska or of less than 2,560 acres within Alaska.".

SEC. 4. The first sentence of section 31(b) of the Act of February 25, 1920 (30 U.S.C. 188(b)) is amended to read as follows:

"(b) Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after 30 days notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communization agreement under section 17(j) of this Act which contains a well capable of production of unitized substances in paying quantities.".

SEC. 5. The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) is amended by adding at the end thereof the following new section:

"SEC. 43. Actions taken by the Secretary of the Interior to develop regulations and procedures for a competitive oil and gas leasing program or to hold particular lease sales shall not be subject to the requirements of section 102(2)(c) of the National Environmental Policy Act. Nothing in this section shall be considered as affecting the application of section 102 of the National Environmental Policy Act to the proposed inclusion of any lands in a lease parcel or subsequent phases of oil and gas development.

SEC. 6. Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(a) Subsections (c) and (e) (16 U.S.C. 3148(c) and (e)) are deleted in their entirety;

(b) The second sentence of section 1008(d) (16 U.S.C. 3148(d)) is deleted; and

(c) Subsection (d) and (f) through (i) (16 U.S.C. 3148(d) and (f) through (i)) are renumbered subsections (c) througfh (g) respectively.

SEC. 7. (a) Notwithstanding any other provision of this Act and except as provided in paragraph (d) of this section, all noncompetitive oil and gas lease applications filed pursuant to regulations governing the simultaneous oil and gas leasing system (43 C.F.R. Subpart 3112) and pending on the date of enactment of this Act shall be processed, and leases shall be issued, if appropriate, under the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as it was in effect before its amendment by this Act. If the date of enactment of this Act occurs during a simultaneous filing period prescribed by the regulations of the Department of the Interior, all applications filed during that period shall be considered filed prior to the date of enactment.

(b) Notwithstanding any other provision of this Act and except as provided in paragraph (d) of this section, all noncompetitive oil and gas lease offers filed pursuant to the regulations governing the over-the-counter leasing system (43 C.F.R. Subpart 3111) prior to July 1, 1986, shall be processed, and leases shall be issued, if appropriate, under the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as it was in effect before its amendment by this Act. If the Secretary posts tracts for competitive sale continuing lands in an over-the-counter noncompetitive lease offers filed between July 1, 1986, and the date of enactment of this Act, and if any such tracts do not receive bids of $35 or greater per acre at the sale, the Secretary shall reinstate the noncompetitive lease offers for these tracts and shall issue leases in accordance with section 17(c) of the Act of February 25, 1920 (30 U.S.C. 226(c)).

(c) Notwithstanding any other provision of this Act, all competitive oil and gas lease bids filed pursuant to applicable regulations (43 C.F.R. Subpart 3120) pending on the date of enactment of this Act shall be processed, the high bid for each tract shall be accepted without further evaluation of the value of the tract, and leases shall be issued if otherwise appropriate under the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as it was in effect before its amendment by this Act.

(d) No noncompetitive lease applications or offers pending on the date of enactment of this Act for lands within the Shawnee National Forest, Illinois, the Ouachita National Forest, Arkansas, the Overthrust Belt area of Wyoming as defined by the Director, Bureau of Land Management, by memorandum dated February 24, 1986, Fort Chaffee, Arkansas, or Eglin Air Force Base, Florida, shall be processed until these lands are posted for competitive bidding in accordance with section 2 of this Act. If any such tract receives no bid of $35 or greater per acre, then the noncompetitive applications or offers pending for such a tract shall be reinstated and noncompetitive leases issued, if appropriate. If competitive leases are issued for any such tract, then the pending noncompetitive application or offer shall be rejected.

SEC. 8. (a) Except as provided in section 6 of this Act, all oil and gas leasing pursuant to the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), after the date of enactment of this Act shall be conducted in accordance with the provisions of this Act.

(b) The Secretary shall issue final regulations within 180 days after the date of enactment of this Act. The regulations shall be effective when published in the Federal Register. The environmental and economic impacts of this Act having been fully considered by the Congress, the Secretary shall not prepare any environmental, economic or small business impact analyses, which may otherwise be required by law or executive order, when he prepares proposed regulations or adopts final regulations implementing this Act.

(c)(1) Prior to issuing regulations implementing this Act, the Secretary shall hold at lease one competitive lease sale pursuant to section 2 of this Act. Sale procedures shall be established in the notice of sale. This sale shall include tracts which, but for the enactment of this Act, would have been posted for the filing of simultaneous oil and gas lease applications pursuant to applicable regulations (43 C.F.R. Subpart 3112). The Secretary may also include in the sale tracts which would otherwise have been posted for competitive sale pursuant to applicable regulations (43 C.F.R. Subpart 3120) and tracts which received over-the-counter noncompetitive oil and gas lease offers pursuant to applicable regulations (43 C.F.R. Subpart 3111) between July 1, 1986, and the date of enactment of this Act. The Secretary may hold additional sales if he considers it necessary prior to the issuance of final regulations pursuant to subsection (b) of this section.

(2) If tracts which would, but for the enactment of this Act, have been posted for the filing of simultaneous applications do not receive bids of $35 or greater per acre at a competitive sale held under this section, they shall subsequently be posted for the filing of simultaneous applications provided the Secretary has not yet issued regulations under subsection (b) of this section.

(3) If no competitive or noncompetitive leases are issued for lands posted for sale as provided in paragraph (c) of this section, the Secretary shall lease such tracts in accordance with the regulations issued pursuant to paragraph (b) of this section.

SEC. 9. The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*) is amended by inserting after section 40 the following new section:

"SEC. 41. (a) Any person shall be liable under the provisions of this section if that person knowingly and willfully misrepresents to the public the provisions of this Act and its implementing regulations, by any means of communication, in the following respects:

(1) the value or potential value of any lease issued under this Act or portion thereof;

(2) the value or potential value of any lease to be issued under this Act or portion thereof;

(3) the value or potential value of any land available for leasing under this Act;

(4) the availability of any land for leasing under this Act; or

(5) the ability of the person to obtain leases under this Act on his or her own behalf or on behalf of any other person.

(b) Any person who organizes, or participates in, any scheme, arrangement, plan or agreement to circumvent the provisions of this Act or its implementing regulations

shall be liable under the provisions of this section.

(c) The Attorney General shall institute, against any person who, given the nature of the intended recipient of the communication, knew or should have known he or she was violating subsection (a) or (b) of this section, a civil action, in the District Court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to a prohibition from participation in exploration, leasing, or development of any Federal mineral, or both.

(d) Any person who knowingly and willfully violates the provisions of this section shall, upon conviction, be punished by a fine of not more than $500,000 for each violation or by imprisonment for not more than five years, or both.

(e)(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee or agent of such corporation or entity who authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

(2) Whenever any officer, employee or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action.

(f) The remedies, penalties, fines and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines and imprisonment afforded by any other law or regulation.

(g)(1) A State may commence a civil action under subsection (c) of this section against any person conducting activity within the State in violation of this section. Civil actions brought by a State shall only be brought in the United States District Court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

(2) The State shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within 30 days of filing of the action.

(3) Any civil penalties recovered by a State under this subsection shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate. If a civil action is jointly brought by the Attorney General and a State, by more than one State or by the Attorney General and more than one State, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action.

(4) Nothing in this section shall deprive a State of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.

SECTION-BY-SECTION ANALYSIS OF A PROPOSAL TO AMEND THE ACT OF FEBRUARY 25, 1920, TO PROVIDE FOR COMPETITIVE LEASING OF OIL AND GAS FOR ONSHORE FEDERAL LANDS, AND FOR OTHER PURPOSES

Section 2 directs the Secretary of the Interior to lease all lands to the highest responsible, qualified bidder by competitive bidding as long as the highest bid equals or exceeds $35 per acre. This section specifically directs that no tract evaluations shall be conducted. All land receiving no bid or bids below $35 per acre will be rejected and leased to the person first making application within a period not to exceed one year, without competitive bidding. Currently, only those lands located within a "known geologic structure of a producing oil or gas field" (KGS) are eligible for competitive bidding. All other lands, regardless of perceived value, must be leased noncompetitively to the first qualified applicant. This section eliminates the use of KGS as the competitive-noncompetitive arbiter and replaces it with the market value of $35 per acre criterion. No change is made to the Secretary's discretion to establish reasonable procedures for determining the first qualified applicant. However, the $35 per acre criterion does establish the fact that lands leased noncompetitively are worth less than $35 per acre. Following the Secretarial set period not to exceed one year, any lands again available for leasing shall be leased to the highest responsible, qualified bidder by competitive bidding as described above.

Section 2 also directs that leases should contain no more than 5,120 acres. Currently, competitively leased tracts are limited to a statutory maximum of 640 acres while noncompetitive leases are limited to a regulatory maximum of 10,240 acres. Most leases are between 1,000 and 1,500 acres. This provision would prevent the need for reducing the size of relinquished, canceled, terminated, or expired leases before reoffering.

Section 2 also directs that leases should have royalty rates of 12½ percent and have a primary term of 10 years regardless of whether they were leased competitively or not. Currently, competitive leases have sliding scale royalties varying between 12½ and 25 percent depending upon production. Noncompetitive leases have a fixed 12½ percent royalty rate. The purpose for the change is consistency between the two forms of leasing and to eliminate the uncertainty introduced in competitive bidding by the sliding scale. Further, competitive leases currently have 5 year lease terms while noncompetitive leases have 10 years. The lease term is lengthened to 10 years because it takes more than 5 years in many instances to put an economically feasible drilling area together and for consistency between the two forms of leasing. Finally, section 2 provides for a minimum royalty of "not less than" $1 per acre. This would eliminate the possibility of the minimum royalty being less than the rental rate on a lease.

Section 3 allows the Secretary to disapprove assignments if they involve a separate zone or deposit, are less than 640 acres, or contain an overriding royalty above the regulatory maximum. This section is aimed at preventing the "40 acre" merchant from leasing large tracts of land and then breaking that lease into many small parts which can be marketed to an unsuspecting public.

Section 4 provides for the cancellation of any lease by the Secretary unless the lease contains a well capable of production or is part of a unit plan or commutization agreement. Currently, only lands in a KGS are not subject to Secretarial cancellation. Since section 2 removes the need for KGS classification, the cancellation provisions are adjusted by this section to be consistent.

Section 5 provides that actions taken as a result of this Act are not "major Federal actions" for the purposes of implementing section 102 of the National Environmental Policy Act (NEPA). Lease issuance will continue to be subject to NEPA. Section 5 obviates the need to write a programmatic environmental impact statement, as well as impact statements for particular lease sales or for future regulation changes.

Section 6 amends the Alaska National Interest Lands Conservation Act to make leasing in Alaska consistent with that of the lower 48 States. Specifically, the favorable producing geological province (FPGP) is eliminated and replaced with the provisions of section 2. This does not affect in any way the current leasing program in the National Petroleum Reserve-Alaska (42 U.S.C. 6508) nor does it have any effect on the Alaska National Wildlife Refuge (16 U.S.C. 3141).

Section 7 describes "grandfather" provisions for lease applications pending at the time this Act is enacted. Paragraph (a) grandfathers pending simultaneous, noncompetitive applications and provides an orderly transition if the Department is conducting a simultaneous filing at the time this Act is enacted. Paragraph (b) grandfathers over-the-counter noncompetitive applications filed prior to July 1, 1986. The July 1 cut-off date will avoid a last-minute rush of lease applications. Paragraph (c) grandfathers pending competitive applications. Paragraph (d) grandfathers pending, noncompetitive applications in certain controversial areas only if the land are not leased competitively under section 2.

Section 8 requires issuance of regulations within 180 days of enactment of this Act. It releases the Secretary from preparing any environmental, economic, or small business impact analyses associated with the regulatory process. Finally, this section requires the Secretary to hold at least one lease sale under the provisions of this Act without having implemented regulations.

Section 9 of the proposed bill is intended to provide specific authority to regulatory and enforcement agencies to combat fraudulent practices involving the onshore oil and gas leasing system. These practices generally result from a company attempting to entice the public into using its services to file lease offers or trying to sell the public partial assignments of existing leases.

Paragraph (a) establishes that those who knowingly and willfully misrepresent the provisions of the Act to the *public* incur liability under the section. The types of misrepresentation which are listed are the most pervasive. Because the paragraph is written broadly, the misrepresentation must be made to the public. Private business dealings are not covered by this section. Paragraph (b) establishes liability for schemes organized to circumvent the provisions of the Act.

Paragraphs (c) and (d) contain the penalty provisions. Paragraph (c) establishes a civil penalty of not more than $100,000 for each violation and of other appropriate remedies such as a ban on participation in the onshore leasing program. The paragraph has the general civil penalty standard of "knew or should have known", but also bases liability on the level of knowledge of the recipient of the alleged misrepresentation. For example, an oil company would appreciate the high degree of uncertainty in

predicting oil potential and therefore misrepresentation to such a company would be extremely difficult to prove. The paragraph authorizes the Attorney General to bring the action, but this is not intended to prevent enforcement by other Federal agencies such as the Federal Trade Commission.

Paragraph (d) provides for criminal penalties of not more the $500,000 or five years in jail, or both.

Paragraph (e) provides joint liability between employer and employee, corporation and officers and principal and agent. Paragraph (f) provides all remedies are both concurrent and cumulative, and are in addition to any other remedies provided by law.

Paragraph (g) authorizes States to bring civil penalty actions under paragraph (c) in Federal court. A State is required to notify the United States of any enforcement action in order to facilitate coordination. The State keeps all fines collected. The paragraph also provides for coordinated enforcement action between States, or between a State and the United States, with sharing of fines collected.

RECOGNITION OF SENATOR PROXMIRE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin, Mr. PROXMIRE, is recognized for not to exceed 5 minutes.

Mr. PROXMIRE. Mr. President, I understand that, for technical reasons, it would be desirable to determine whether or not the electronic system is working and the quorum buzzers and so forth are in operation. So, for that reason, I ask unanimous consent, without losing my time, that I may suggest a very short quorum call for the purpose of testing the system.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Wisconsin is recognized.

IS CURRENT DEFENSE FUNDING ADEQUATE TO MEET TODAY'S MILITARY THREAT?

Mr. PROXMIRE. Mr. President, over the past several weeks this Senator has spoken out here in the Senate many times on the clear superiority the United States enjoys militarily against the Soviet Union. Let's quickly review that lead. We have a decisive technology advantage. We have an overwhelming economic advantage. We have a huge geographic advantage. We have a large and growing advantage in the survivability of our nuclear deterrent. We have an unquestioned advantage in the quality of our weapon systems, both strategic and conventional. We have a major advantage in the military strength of our NATO allies as compared to the Warsaw Pact allies of the Soviet Union, and we have a well-documented advantage in the education, the skill, the training and the readiness of our military personnel.

There is not one single significant area of military power where a Soviet advantage is not more than offset by a closely related and corresponding advantage or series of advantages by the United States. What are the implications of this for the resources the Congress provides for our military forces this year? Can the United States continue to maintain a sufficient superiority over the Soviet Union without the massive increase in spending the President has called for? Mr. President, the answer is an emphatic "Yes."

How can we be sure the Soviet's won't take advantage of a letup in the military buildup by America to step up their own military spending? The answer is that we have the record. The Central Intelligence Agency and the Defense Intelligence Agency together testified before a panel of the Joint Economic Committee last month. I chaired that panel. For the first time in many years the two prime military intelligence agencies of our Government agreed. They agreed that during the past 10 years, a time when the United States has been increasing its military spending at an average annual rate of 3½ percent, the Soviet Union has increased its overall military spending only about half that fast, that is, by about 2 percent, and its procurement spending almost not at all.

Mr. President, I have a chart here that shows the enormous discrepancy in the last 10 years between the increase in procurement spending by the United States and the very, very slight increase by the Soviet Union. It is an enormous discrepancy. We have gained immensely in procurement compared to the Soviet Union in military procurement over the last 10 years.

Now, Mr. President, this funding is particularly noteworthy because the Soviet Union has been fighting a war in Afghanistan during the past 6 years that surely accounts for far more than the 2-percent Soviet military spending increase estimated by both our intelligence agencies. This suggests that the Soviet Union has actually been decreasing, not increasing, its military buildup versus the United States if we take the Afghanistan expenditures into account. So what does all this mean? It means that if the Congress follows the suggestions of the Senate Budget Committee, if it holds funding of the Nation's military forces this year to the increase in inflation, we will be able to maintain our current advantage over the Soviets.

For many years and through many administrations the prime argument used by Presidents and Secretaries of Defense to persuade the Congress to increase military funding has been that good old perennial, the Russians are coming. The Soviets are building up. We have to spend more to match the Soviets. Now as a former President used to say: "That dog won't hunt." All of us are aware that we live in a more dangerous world. The military threat has changed. The Soviet Union still plays a part, but the Soviet Union at the moment is not front and center. At the moment our eyes are focused on two areas: Central America is one serious military problem. Libya and international terrorism constitute the other. Do we need to increase military spending by billions of dollars to meet either of these newer threats? Let us consider each of them. In Central America the President has been emphatic and consistent. He has told the Nation and he has told the Congress repeatedly that he will not send American troops into Central America. Some Members of the Congress disagree with the President's judgment.

Some of our colleagues believe we will require American troops in Central America. Should the Congress appropriate more military funds to prepare for the possibility of a requirement of substantial United States military forces in Nicaragua or elsewhere in Central America? No. The President has not asked for such funding. If he does, the Congress should make that decision when the time comes and on the basis of the facts at that time. If necessary the Congress can pass funding legislation for Central American activities when the President calls for it. We should debate the wisdom of taking such an action only when the situation may require it and only if the Congress judges the situation does require it. There is no case for increasing military funding to meet the Central American situation unless the President specifically requires it.

How about more military funding to cope with the exploding threat of terrorism as posed by Libya and others? Again, the Defense Department and the President should make their case, if there is one, for increasing military spending to meet the terrorist crisis. To date the Defense Department has acted twice, vigorously and with very substantial force with respect to Libya. If the action cost significant additional military funding, the Congress has not been told about it. This country's elaborate and costly intelligence apparatus and its massive Army, Navy, Air Force, and Marines would certainly seem to have the resources to cope with the challenge of terrorism. If not, a more effective use of these huge resources, not a multibil-

lion dollar additional appropriation, should be our answer.

So can the Congress responsibly limit funding for the military to the rise in inflation in 1987? Mr. President, we can, indeed. We have a substantial military advantage over the Soviet Union now. It has been increasing dramatically in recent years. We can easily meet our newest military threats, in Central America and from worldwide terrorism, within the present military budget.

MYTH OF THE DAY: WHOLE HERD BUYOUT PROGRAM WILL COST TAXPAYERS ALMOST $2 BILLION

Mr. PROXMIRE. Mr. President, the myth of the day is that the dairy whole herd buyout program will cost American taxpayers almost $2 billion. You talk about a myth—this is really a whopper!

Where did the $2 billion figure come from in the first place? Total costs of the whole herd buyout program over its 5-year life will be $1.827 billion. This is the total sum required to compensate dairy farmers who agree to stop being dairy farmers for 5 years and ship their dairy cows and replacement heifers and calves off to slaughter.

But there is one big point that is being missed by the mythmakers, Mr. President. Assessments are being levied on each hundredweight of milk marketed by dairy farmers who remain in business, and this means that dairy farmers themselves are going to pay for about $700 million of the whole herd buyout program costs, thereby reducing the taxpayers' share to approximately $1.1 billion.

This fact alone demolishes the myth, but there is more to the story. Reliable estimates indicate that Commodity Credit Corporation [CCC] dairy product purchases over the 5-year term of the whole herd buyout program will amount to 33 billion pounds milk equivalent. What would happen in the absence of this program? Estimates are that CCC purchases in this same 5-year period would be around 80 billion pounds milk equivalent.

In other words, Mr. President, the whole herd buyout program will end up cutting CCC dairy product purchases to the tune of about 47 billion pounds milk equivalent. And what kind of dollar savings are we talking about here? With a total of about $15 per hundredweight of milk equivalent purchased to cover initial costs, reprocessing, storage, and interest, the total savings add up to over $7 billion.

Engaging in some simple arithmetic, if we subtract what it will cost the taxpayers to fund the whole herd buyout program—namely, $1.1 billion—from the $7 billion savings in CCC dairy product purchases resulting from the program's operation, we see that this program is going to save American taxpayers something in the neighborhood of $5.9 billion!

Just to add icing to the cake, Mr. President, we must add to these savings the amount in Federal income taxes attributable to the buyout program. Since many buyout participants will have income from livestock sales and buyout payments not offset by deductions, their Federal income tax payments will increase.

Where does this all lead? The dairy whole herd buyout program means a savings to U.S. taxpayers that exceeds $6 billion. Those who hang a price tag of almost $2 billion for this program around the necks of the taxpayers are truly perpetrators of a grand and glorious myth.

Mr. President, this is a picture of a beautiful Wisconsin dairy herd at this lovely time of year.

Mr. President, I yield the floor.

RECOGNITION OF SENATOR WEICKER

The ACTING PRESIDENT pro tempore. Under a previous order, the Senator from Connecticut [Mr. WEICKER] is recognized for not to exceed 5 minutes.

The Senator from Connecticut.

THE DEDICATION OF THE UNDERSEA HABITAT, HYDROLAB, TO THE SMITHSONIAN MUSEUM

Mr. WEICKER. Mr. President, I rise to remind my colleagues of an invitation each of them has received to attend a reception at the Smithsonian's Museum of Natural History to mark the opening of a fascinating and informative exhibit.

Hydrolab, the underwater laboratory that revolutionized oceanographic research by permitting scientists to live and work in the sea for lengthy periods of time, will go on public display on May 15 at the Museum of Natural History. This unique laboratory supported research efforts by marine scientists in waters off Florida and Grand Bahama Island for 11 years beginning in 1976.

The National Oceanic and Atmospheric Administration acquired Hyrolab in 1976 for its National Undersea Research Program, which is responsible for providing manned and unmanned vehicles for marine scientific research. The NOAA-owned Hydrolab operated for 9 years as an undersea habitat at a depth of 50 feet on the seafloor off St. Croix, U.S. Virgin Islands.

During two decades of work, Hydrolab served as the base for nearly 200 scientific missions involving more than 400 scientists from 10 countries, without a single mishap. During this time, more aquanauts were trained and more underwater hours were logged in Hydrolab than all other working habitats in the world combined. The scientists on Hydrolab missions lived on the sea floor for as long as 7 days without returning to the surface, entering and leaving the lab through a hatch located underneath the habitat. Wearing scuba gear, the aquanauts could then conduct research excursions to depths as great as 150 feet.

Some of the many research missions using Hydrolab included studies on the importance of seagrass beds as fish nurseries, the behavior of fish toward commercial traps, and the extraction of medicinal compounds from marine animals.

Research missions using Hydrolab ended in 1985. NOAA is now developing a more advanced undersea laboratory where scientists can work in the ocean environment. The new habitat is designed to be moved anywhere in the Caribbean, and provides three times the interior living and laboratory space of Hydrolab. It can be placed at depths up to 120 feet, and should be operational by the beginning of 1987. This habitat marks the beginning of what I trust will be a new era of advanced undersea research and exploration capabilities.

But what we have in the Hydrolab exhibit at the Smithsonian is the opportunity to see an actual habitat, and when you see it you will believe that this 16-feet-long, 8-feet-wide cylinder was the underwater laboratory that allowed scientists to perform important marine research. The information that those scientists collected from it gave the world tremendous insights into our undersea world.

So I hope my colleagues can take the time tomorrow evening to attend the reception and opening of the Hydrolab exhibit from 7 to 9 p.m. at the Smithsonian.

I yield the floor.

RECOGNITION OF SENATOR McCONNELL

The ACTING PRESIDENT pro tempore. Under a previous order, the Senator from Kentucky [Mr. MCCONNELL] is recognized for not to exceed 5 minutes.

The Senator from Kentucky is recognized.

THE FEDERAL TORT CLAIMS REFORM ACT AND THE GOVERNMENT CONTRACTOR LIABILITY REFORM ACT

Mr. McCONNELL. Mr. President, I am pleased and proud to introduce today, on behalf of the administration and President Reagan, two separate bills that address the continuing crisis

in our civil justice and liability insurance systems. These bills, drafted by the administration and endorsed by President Reagan, are parallel in many important respects to the bill I introduced in February to bring some much-needed and long-term relief to the availability and affordability crisis in the liability insurance systems. Both bills, like S. 2046, which I introduced earlier this session, impart a degree of predictability and fairness to the award of damages in tort litigation.

To that extent, both bills address in a fundamental way what is arguably one of the most serious problems facing most Americans today—the lack of affordable insurance to cover the risks of day to day life in our modern society.

Mr. President, I pointed out in February that we are facing a crisis of confidence in our court system, a system that no longer seems to balance the need for compensation for accidents and injury with the need for restraint in imposing liability for such accidents out of all proportion to the damage incurred or to the degree of fault of the defendant. Then as now, we run the risk that this crisis will become not only a crisis for our legal system, but also a crisis of confidence in our Government.

Worse, we run the risk that our civil justice system will become little more than a national lottery, with the winners being the lawyers and a few plaintiffs, with the rest of us, including the millions of American consumers who are priced out of the insurance market, the ultimate losers.

This is a problem that we cannot afford to ignore, Mr. President, and I have been quite vocal about it. I am pleased that the need for fundamental tort reform, in addition to possible changes in the insurance industry, is now generally recognized. Several weeks ago two former Attorneys General of the United States, Griffin B. Bell and Benjamin Civiletti, joined in the call for fundamental tort reform. Speaking at the national symposium on civil justice issues, sponsored by the Fordham University School of Law and the Insurance Information Institute, both of these distinguished former representatives of the Carter administration urged substantial reforms of our current system. In Mr. Civiletti's words, "we ought to have a lot of reform, not a little reform."

I agree wholeheartedly, Mr. President, and am gratified that such distinguished lawyers as these have put their influence behind the tort reform movement, as has President Reagan. Importantly, Mr. President, what this demonstrates is that tort reform is not a Republican issue, nor an insurance industry issue. On the contrary, as the thousands of people who have contacted my office over the past months have demonstrated, tort reform is for all Americans. Without it, what I and many others perceive as a fundamental imbalance in the civil justice system will continue to worsen until the system can no longer cope.

As I mentioned, I am introducing today two separate bills. The first deals with tort claims against the Federal Government under the Federal Tort Claims Act. The second deals with claims against Government contractors. Both bills, like the Litigation Abuse Reform Act that I introduced in February, seek to impose rational restrictions on the award of damages in tort actions in which the Federal Government has an interest. They do this by putting a cap of $100,000 on the award of noneconomic damages, including punitive damages. These awards are inherently unpredictable, and are limited only by the whim of the jury. Like my earlier bill, these limitations will not deprive any injured plaintiff of actual economic damages, such as past or future medical expenses, or loss of earnings.

Mr. President, both bills are explained at some length in separate section-by-section analyses, and I ask unanimous consent that they appear, along with the text of the bills, at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit No. 1.)

Mr. McCONNELL. Let me point out two other aspects of the bills that are unlike my earlier legislation. First, both bills would eliminate the application of joint and several liability for those actions covered by the bills. Under current law, a defendent who is only minimally responsible for an injury can be held liable for the entire award of damages, while a defendent who is 99 percent responsible may pay nothing. This doctrine must be changed if we are to return to a sensible approach to tort law, and I am pleased that the administration has included this provision in its bills.

Second, both bills revitalize the concept of fault-based liability, which is perhaps the cornerstone of the administration's tort policy working group report issued earlier this spring. Fault has historically been the basis for liability in our civil justice system, and it is only recently that we have abandoned it in favor of universal recovery. Yet if the court system is to administer a comprehensive compensation system, as tort law has become, then it is appropriate that the Congress establish the reasonable parameters for that system. The return to fault based liability that these bills propose in the connection of Federal tort claims and Government contractor liability will do just that.

Mr. President, I am committed to bringing the liability crisis under control. The bills I am introducing today put us much closer to that goal, for they signal, for the first time, a united effort by the administration and the Congress. These bills are similar in most substantive respects to the administration's product liability reform recently introduced, and they are conceptually quite similar to my earlier legislation. Consequently, we will now see both the administration and the principal Senate committees with jurisdiction in the tort and insurance fields working on a common approach.

Mr. President, the distinguished chairman of the Judiciary Committee, Senator THURMOND, is an original cosponsor of this legislation, and I ask unanimous consent that a statement that he may wish to submit appear in the RECORD immediately after my remarks. I would urge my colleagues to join me in supporting these important measures, and to lend their support as well to the larger problem we face of solving the liability crisis.

The ACTING PRESIDENT pro tempore. Without objection, the request of the Senator from Kentucky is so ordered.

S. 2440

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Tort Claims Reform Act of 1986".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds and declares that—

(1) tort liability awards against the United States in recent years have become increasingly unreasonable and unfair;

(2) a reason for this development is the "deep pocket" of the United States, resulting in the United States being liable for damages attributable to the fault or responsibility of others;

(3) the sharply varying damage awards under the provisions of law commonly known as the Federal Tort Claims Act for similar injuries are arbitrary and fundamentally unfair to both the United States and to persons compensated under such Act;

(4) persons compensated under the Federal Tort Claims Act should not obtain double recovery from both the Government and collateral sources of compensation;

(5) it is in the public interest to ensure that damages paid by the United States to compensate for future economic loss be paid periodically to ensure that such money is not depleted before it is needed;

(6) plaintiffs' attorneys should receive reasonable compensation from their clients, but should not be permitted to reap a windfall at the expense of their clients and the American taxpayer from high awards or settlements paid by the United States; and

(7) the liability of the United States for claims filed in admiralty should be determined under the same standards and procedures as are established in the Federal Tort Claims Act in order to ensure that all persons seeking tort damages against the United States are treated uniformly.

(b) The purposes of this Act are to—

(1) place reasonable limitations on the tort liability of the United States to ensure

that damages awarded against the United States remain within reasonable bounds,

(2) prevent the United States from being held liable for the wrongdoing of others,

(3) prohibit double recovery of benefits at the expense of the United States,

(4) ensure that compensation for future economic losses is not prematurely depleted,

(5) limit the windfall of plaintiffs' attorneys from high damage awards or settlements, and

(6) make the standards and procedures for determining the liability of the United States in admiralty uniform with the standards and procedures of the provisions of law commonly referred to as the Federal Tort Claims Act.

LIMITATIONS ON LIABILITY

SEC. 3. Section 2674 of title 28, United States Code, is amended by—

(1) inserting "(a)" before "The United States", and

(2) adding at the end thereof the following:

"(b)(1) Except as provided in paragraph (2), the United States shall not be found jointly and severally liable, but shall be liable, if at all, only for those damages directly attributable to its pro rata share of fault or responsibility for an injury, and not for damages attributable to the pro rata share of fault or responsibility of any other person, without regard to whether such person is a party to the action, for the injury, including any person bringing the action.

"(2) This subsection shall not apply between the United States and any person with which it is acting in concert if the concerted action proximately caused the injury for which either the United States or such person is found liable.

"(3) For purposes of this subsection, 'concerted action' or 'acting in concert' means two or more persons consciously acting together in a common scheme or plan, resulting in a tortious act.

"(c)(1) An award of damages for personal injury or death to a person shall be reduced by the amount of any past or future payment or benefit covered by this subsection which such person has received or which such person is eligible to receive for the same personal injury or death.

"(2) As used in this subsection, 'payment or benefit covered by this subsection' means—

"(A) any payment or benefit by or paid for in whole or in part by any agency or instrumentality of the United States, a State, or a local government, or

"(B) any payment or benefit by a workers' compensation system or a health insurance program funded in whole or in part by an employer;

but does not include such payment or benefit that is, or by law is required to be, the subject of a reasonably founded claim of subrogation, reimbursement, or lien.

"(3) This subsection shall not affect the application under this chapter or section 1346(b) of this title of any State law which provides that damage awards shall be reduced by payments or benefits other than those covered by this subsection, or which reduces such damage awards by payments or benefits by an agency or instrumentality of the United States, a State, or a local government, or by a workers' compensation system or health insurance program even when such payments or benefits are, or by law are required to be, the subject of a reasonably founded claim of subrogation, reimbursement, or lien.

"(d)(1) No damages, other than damages for economic loss, shall be awarded in any action for damages against the United States which in the aggregate exceed $100,000.

"(2) For purposes of this subsection, 'any action for damages' includes any action or claim, including multiple actions or claims, for damages, and includes all plaintiffs and all defendants in any such action or claim, which arises out of or was caused by the same personal injury or death.

"(3) For purposes of this subsection, 'economic loss' means damages for past or future (A) expenses of health or other care; (B) expenses of rehabilitation; (C) loss of earnings; (D) loss of homemaker services; or (E) burial expenses.".

PERIODIC PAYMENTS OF JUDGMENTS

SEC. 4. (a) Chapter 171 of title 28, United States Code, is amended by adding at the end thereof the following:

"§ 2681. Periodic payments of judgments

"In any action subject to this chapter in which the damages awarded for future economic loss exceed $100,000, the court shall, at the request of the United States, enter an order providing that damages for future economic loss be paid in whole or in part by periodic payments based on when the damages are found likely to occur rather than by a single lump-sum payment. The court shall make findings of fact as to the dollar amount of plaintiff's future economic loss, and the amount, frequency, and duration of such periodic payments. The United States at its discretion may pay the judgment periodically or purchase an annuity for the same purpose. The judgment of the court shall be final, and, in the absence of fraud, shall not be reopened at any time to contest, amend, or modify the schedule or amount of such payments.".

(b) The table of sections for chapter 171 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"2681. Periodic payments of judgment.".

ATTORNEY FEES

SEC. 5. Section 2678 of title 28, United States Code, is amended by—

(1) inserting in the first paragraph, after "25 per centum", the following: "of the first $100,000 (or portion thereof) recovered, plus 20 per centum of the next $100,000 (or portion thereof) recovered, plus 15 per centum of the next $100,000 (or portion thereof) recovered, plus 10 per centum of any amount in excess of $300,000";

(2) inserting in the first paragraph, after "20 per centum", the following: "of the first $100,000 (or portion thereof) recovered, plus 15 per centum of the next $100,000 (or portion thereof) recovered, plus 10 per centum of any amount in excess of $200,000"; and

(3) adding at the end of the first paragraph the following: "If the settlement or award of damages includes periodic payments, the amount recovered attributable to such periodic payments means the cost of the annuity or other monetary cost of the United States of the settlement or award, or, if the monetary cost cannot be determined, the present value of the periodic payments.".

LIABILITY IN ADMIRALTY

SEC. 6. (a) Chapter 171 of title 28, United States Code, as amended by section 4, is further amended by adding at the end thereof the following:

"§ 2682. Liability in admiralty

"Notwithstanding section 2680(d), the provisions of this chapter (with the exception of section 2680(k)), including the administrative claims procedures, the attorney fees limitations, and the exceptions and all conditions on the liability of the United States, shall apply to and be controlling over any claim or suit against the United States filed under the provisions of the Suits in Admiralty Act (46 U.S.C. 741 et seq.), the Public Vessels Act (46 U.S.C. 781 et seq.), and the Act entitled 'An Act for the extension of admiralty jurisdiction' (46 U.S.C. 740).".

(b) The table of sections for chapter 171 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"2682. Liability in admiralty.".

SEVERABILITY

SEC. 7. If any provision of this Act or the amendments made by this Act or the application of any such provision to any person or circumstance is held invalid, the remainder of this Act and such amendments and the application of any provision to any other person or circumstance shall not be affected thereby.

APPLICABILITY OF AMENDMENTS

SEC. 8. The amendments made by this Act shall apply to all actions filed on or after, and all administrative claims pending on or filed on or after, the date of enactment of this Act.

EFFECTIVE DATE

SEC. 9. This Act and the amendments made by this Act shall become effective upon the date of enactment.

THE FEDERAL TORT CLAIMS REFORM ACT OF 1986: SECTION-BY-SECTION ANALYSIS

Section 1 sets out the short title of the Act as the "Federal Tort Claims Reform Act of 1986."

Section 2 sets out the findings and purposes of the Act.

Section 3 of the Act amends title 28 of the United States Code by adding several new subsections to section 2674.

Paragraph (b)(1) of section 3 states that except as provided in paragraph (b)(2), the United States may not be found jointly and severally liable. Rather, the United States may be found liable only for that portion of the damages directly attributable to its proportionate share of fault or responsibility for the injury.

Paragraph (b)(2) of the subsection provides that the prohibition against such joint and several liability does not apply in those cases where the United States and another person were acting in concert and where that concerted action was the proximate cause of the injury for which the United States or the other person was found liable.

Paragraph (b)(3) of the subsection defines "concerted action" and "acting in concert."

A new subsection (c) provides that any award for damages under the Federal Tort Claims Act is to be reduced by the amount of past or future compensation which the person has received, or is eligible to receive, from certain collateral sources. The subsection specifies the types of collateral sources covered by the subsection to be: (1) any benefit or payment provided by any agency or instrumentality of the United States, a State or a local government; and (2) any payment or benefit by a workers' compensation system or an employer-funded health insurance program. The subsection does not

apply to such benefits, however, to the extent that the provider of such payments pursues (or by law is required to pursue) a right to subrogation.

Paragraph (c)(3) clarifies that the subsection is not intended to affect the application under the Federal Tort Claims Act of any State law which allows for the reduction of damage awards for collateral sources other than those specified in the subsection, or which allows for such reductions even where a right of subrogation is pursued.

A new subsection (d) places a cap of $100,000 on the amount of non-economic damages (e.g., pain and suffering, and similar damages) that can be awarded against the United States. The subsection provides that the cap applies to all actions and claims which arise out of or were caused by the same personal injury or death. Under the subsection, non-economic damages consist of all damages other than damages meant to compensate for past and future health care or other expenses, the cost of rehabilitation, lost earnings, loss of homemaker services, and burial expenses. These specified damages, defined as "economic loss," are unaffected by the subsection.

Section 4 amends the United States Code by adding a new section on periodic payments.

The new section provides that where the damages awarded against the United States exceeds $100,000 in future economic loss, the United States may pay the future damages in periodic payments over the period of time and damages are found likely to occur. The court would make the determination as to the amount, frequency and duration of the payments, and the United States could then make the payments periodically, either by periodic payments directly out of the Judgment Fund or by purchasing an annuity to make the payments. The judgment would be final and could not be reopened or modified without a showing of fraud.

Section 5 of the Act would amend section 2678 of title 28 to establish a "sliding scale" for the attorneys' fees paid out of awards and settlements under the Federal Tort Claims Act. The percentage of the award paid out in attorneys' fees would decrease as the amount of the award or settlement increases.

Section 5 also would add a new sentence to section 2678 providing that where damages are to be paid periodically, the limitation on the attorneys' fees will be based on the cost of the annuity or the monetary cost of the payments to the United States or, where the monetary cost cannot be determined, on the present value of the periodic payments.

Section 6 of the Act amends title 28 by adding a new section 2682 to chapter 171. The new section makes the provisions of that chapter, as amended by this Act, applicable to all claims and suits filed against the United States under the following Admiralty statutes: the Suits in Admiralty Act, the Public Vessels Act and the Admiralty Extension Act. The section does not, however, apply the foreign nation exception (28 U.S.C. § 2680(k)) of the Federal Tort Claims Act to the liability of the United States in Admiralty, since such would be inconsistent with the international character of Admiralty liability.

Section 7 is a severability clause which preserves the balance of the Act if any portion of it is held to be invalid.

Section 8 provides that the Act is intended to apply to all actions filed on or after, and all administrative claims pending on or after, the enactment of the Act.

Section 9 provides that the Act will become effective on the date of enactment.

S. 2441

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Government Contractor Liability Reform Act of 1986".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that—

(1) the United States has a compelling interest in ensuring that its contractors are held to fair and reasonable standards of tort liability;

(2) Government contractors in recent years have encountered a rapid expansion in their tort liability which seriously interferes with their ability to provide many of the goods and services required by the United States;

(3) as a result, many Government agencies are encountering growing difficulties in obtaining goods and services essential to their responsibilities;

(4) where such goods and services are available, they often are only available at a far higher cost to the United States;

(5) among the programs most seriously affected are programs designed to protect public health and safety, and programs involving the national security;

(6) where liability of Government contractors is not based on fault or wrongdoing, such liability often impedes contractors from providing goods and services which the United States has determined to be in the public interest;

(7) the increasing unpredictability of tort law has made it difficult for Government contractors to assess their liability risks, and has made many contractors particularly reluctant to undertake activities that pose unlimited or indeterminable liability;

(8) the high transaction costs of the civil justice system, in which almost twice as much money goes to attorneys' fees and litigation expenses as to compensate victims, places an intolerable burden on the American taxpayer to whom much of such costs are ultimately passed; and

(9) these and other excesses in the civil justice system can and should be remedied through appropriate limitations on contractor liability.

(b) The purposes of this Act are—

(1) to place reasonable limitations on the civil liability of Government contractors to ensure that the United States is able to obtain the goods and services necessary to further the public welfare,

(2) to protect the American taxpayer from inordinate and unreasonable costs, and

(3) to limit many of the excesses of the civil justice system which subject contractors of the United States to unacceptable and unreasonable liability risks.

DEFINITIONS

SEC. 3. As used in this Act the term—

(1) "action" means a contractor product liability action, a contractor service action, or a combination of such actions;

(2) "contractor" means any person who has contracted with an agency or instrumentality of the United States to supply a product or service, and includes a subcontractor under such a contract;

(3) "contractor product liability action" means any action or claim, including a wrongful death action, involving the design, production, distribution or sale of a product, filed in Federal or State court seeking damages from a contractor for a personal injury or death attributable to the product;

(4) "contractor service action" means any action or claim, including a wrongful death action, filed in Federal or State court seeking damages from a contractor for a personal injury or death attributable to the provision of a service;

(5) "economic loss" means past or future (A) expenses of health or other care, (B) expenses of rehabilitation, (c) loss of earnings, (d) loss of homemaker services, or (E) burial expenses;

(6) "non-economic damages" means all damages other than damages for economic loss, and includes punitive or exemplary damages;

(7) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity;

(8) "product" means any object, substance, mixture, or raw material, including any part or combination of parts thereof, or an ingredient, which is intended for sale or lease to any agency or instrumentality of the United States;

(9) "service" means any work by a contractor performed for or on behalf of any agency or instrumentality of the United States, but does not include the design, production, distribution, or sale of a product; and

(10) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territories of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SCOPE

SEC. 4. (a) The provisions of this Act shall apply to all actions filed in Federal or State court on or after the date of enactment of this Act.

(b) The provisions of this Act shall preempt and supersede any State law to the extent such law is inconsistent with any provision of this Act. Any State law that provides for defenses or places limitations on a person's liability in addition to those contained in this Act is not inconsistent and shall not be preempted or superseded.

(c) Nothing in this Act shall be construed to create or vest jurisdiction in the district courts of the United States over any action subject to his Act.

(d) The provisions of this Act shall not apply to liability subject to section 170 of the Atomic Energy Act of 1953 (42 U.S.C. 2210).

FAULT-BASED LIABILITY

SEC. 5. (a) A contractor shall not be found liable for damages in a contractor product liability action subject to this Act—

(1) for any injury unless either (A) the contractor was negligent in the design, production, distribution, or sale of such product, or (B) the product was defective, and such defect rendered the product unreasonably dangerous;

(2) for any injury related to an unreasonable or unforseeable use or alteration of the product;

(3) for any injury related to the failure to provide an adequate warning or instruction as to any danger associated with the use of the product if such danger would be apparent to a reasonable person, or the danger is a matter of common knowledge; and

(4) for any injury related to a defect in the design of the product, or to a failure to provide an adequate warning or instruction as to any danger associated with the use of the product, unless at the time the product was made the ability to discover and to eliminate the defect or danger was available and capable of use according to engineering and manufacturing practices which were reasonably feasible in light of existing technology.

(b)(1) In addition to any other applicable defense or limitation provided in any provision of the applicable State law—

(A) a defective product may not be found unreasonably dangerous if the defect is the subject of an adequate warning, is apparent to a reasonable person, or is a matter of common knowledge; and

(B) any alteration of the product which is specifically prohibited or warned against, and any use of the product which fails to apply required safeguards or maintenance, shall be deemed unreasonable.

(2) Such contractor may not be found liable for any injury related to the failure to provide an adequate warning or instruction as to any danger associated with the use of the product if the use is unreasonable or unforseeable.

(C) A contractor may not be found liable for damages in a contractor service action subject to this Act unless the contractor is found to have been negligent in providing such service.

JOINT AND SEVERAL LIABILITY

SEC. 6. (a) Except as provided in subsection (b) of this section, joint and several liability may not be applied to any action subject to this Act. A contractor found liable for damages in any such action may be found liable, if at all, only for those damages directly attributable to the contractor's pro rata share of fault or responsibility for the injury, and may not be found liable for damages attributable to the pro rata share of fault or responsibility of any other person (without regard to whether such person is a party to the action) for the injury, including any person bringing the action.

(b) This section shall not apply between persons acting in concert where the concerted action proximately caused the injury for which one or more of such persons are found liable for damages. As used in this section, "concerted action" or "acting in concert" means two or more persons consciously acting together in a common scheme or plan, resulting in a tortious act.

LIMITATION ON NON-ECONOMIC DAMAGES

SEC. 7. (a) In any action subject to this Act, noneconomic damages may not be awarded in excess of $100,000.

(b) For purposes of this section, "any action" means all actions, including multiple actions, for damages which arise out of or were caused by the same personal injury or death, and includes all plaintiffs and all defendants in such action.

PERIODIC PAYMENT OF JUDGMENTS

SEC. 8. (a) In any action subject to this Act in which the award of damages for future economic loss exceeds $100,000, no contractor may be required to pay such damages in a single, lump-sum payment, but shall be permitted to make such payments periodically, based on a determination by the court as to when the damages are found likely to occur.

(b) The court may require such contractor to purchase an annuity making such periodic payments if the court finds a reasonable basis for concluding that the contractor may not make the periodic payments.

(c) The judgment of the court awarding such periodic payments may not be reopened at any time to contest, amend, or modify the schedule or amount of the payments, in the absence of fraud.

(d) This section shall not be construed to preclude a settlement providing for a single, lump-sum payment.

COLLATERAL SOURCES OF COMPENSATION

SEC. 9. (a) Any damages for personal injury or death awarded to a person in an action subject to this Act shall be reduced by the court by the amount of any past or future payment or benefit covered by this section which the person has received or for which the person is eligible to receive based on the same personal injury or death.

(b) As used in this section, "payment or benefit covered by this section" means—

(1) any payment or benefit by or paid for in whole or in part by any agency or instrumentality of the United States, a State, or a local government, or

(2) any payment or benefit by a workers' compensation system or a health insurance program funded in whole or in part by any employer;

but does not include such payment or benefit that is (or by law is required to be) the subject of a reasonably founded claim of subrogation, reimbursement, or lien.

(c) This section shall not preempt or supersede any State law which provides that damage awards may be reduced by payments or benefits other than those covered by this section, or which reduces such damage awards by payments or benefits by an agency or instrumentality of the United States, a State, or a local government, or by a workers' compensation system or a health insurance program even when such payments or benefits are (or by law required to be) the subject of a reasonably founded claim of subrogation, reimbursement, or lien.

(d) This section shall not apply to any payments or benefits received prior to judgment if such application would reduce the amount of income that would otherwise be considered under section 402(a)(17) of the Social Security Act.

ATTORNEY CONTINGENCY FEE AGREEMENTS

SEC. 10. (a) An attorney who represents, on a contingency fee basis, a person bringing an action subject to this Act may not charge, remand, receive, or collect for services rendered in connection with such action, an amount in excess of 25 per centum of the first $100,000 (or portion thereof) recovered, plus 20 per centum of the next $100,000 (or portion thereof) recovered, plus 15 per centum of the next $100,000 (or portion thereof) recovered, plus 10 per centum of any amount in excess of $300,000 recovered by judgment or settlement in such action.

(b) As used in this section, "contingency fee" means any fee for professional legal services which is in whole or in part contingent upon the recovery of any amount of damages, whether through judgment or settlement.

(c) In the event that such judgment or settlement includes periodic or future payments of damages, the amount recovered for purposes of computing the limitation on the attorney contingency fee shall be based on the cost of the annuity or trust established to make the payments. In any case in which such an annuity or trust is not established to make such payments, such amount shall be based on the present value of the payments.

ALTERNATIVE DISPUTE RESOLUTION

SEC. 11. (a) It is declared to be the policy of the United States to encourage—

(1) the creation, adoption, and use of alternative dispute resolution techniques to achieve the efficient, cost-effective, and expeditious disposition of civil disputes; and

(2) the modification of procedural and evidentiary rules to the extent feasible to accommodate such alternative dispute resolution techniques.

(b) In order to further the policies set forth in this section, the Attorney General shall provide to the Congress, within one year after the date of enactment of this Act, recommendations to implement such policies with regard to civil disputes filed in Federal court.

SEVERABILITY

SEC. 12. If any provision of this Act or the application of any such provision to any person or circumstance is held invalid, the remainder of this Act and the application of any provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

SEC. 13. This Act shall become effective on its date of enactment.

THE GOVERNMENT CONTRACTOR LIABILITY REFORM ACT OF 1986:

SECTION-BY-SECTION ANALYSIS

Section 1 sets out the short title of the Act as the "Government Contractor Liability Reform Act of 1986."

Section 2 sets out the findings and purposes of the Act.

Section 3 sets out definitions of certain terms used in the Act. Among the terms defined are: "contractor," "contractor product liability action," "contractor service action," "economic loss," "non-economic damages," "product," and "service."

Section 4 establishes the scope of the legislation. The Act applies to all contractor product or service liability actions filed in Federal or State courts. The provisions of the Act supersede only those portions of State law which are inconsistent with the limitations imposed by the Act, and do not preempt or supersede State law providing for defenses or limitations on liability in addition to those contained in the Act. The section further provides that the Act does not create federal jurisdiction over actions not otherwise in Federal court. The section also provides that the Act does not apply to liability subject to the Price-Anderson Act.

Section 5, paragraph (a)(1), limits the liability of a contractor in a contractor product liability action to those cases where a contractor was either (1) negligent in the design, production, distribution or sale of a product, or (2) the product was defective, and that defect rendered the product unreasonably dangerous.

Paragraph (a)(1) specifies that a product cannot be found to be unreasonably dangerous if the defect is the subject of an adequate warning, is apparent to a reasonable person, or is a matter of common knowledge.

Paragraph (a)(2) provides that a contractor will not be liable where the injury caused by the product resulted from an unreasonable or unforeseeable use or alteration of the product. Any alteration of a product which is prohibited or warned against, or any use of the product without

the required safeguards, would be considered unreasonable.

Paragraph (a)(3) precludes liability for failure to warn of a danger where the danger is apparent to a reasonable person or is a matter of common knowledge. The paragraph also prohibits liability based on a failure to warn of a danger associated with an unreasonable or unforeseeable use of a product.

Paragraph (a)(4) of the section provides that a contractor may not be held liable for a defect in design or for a failure to warn of a danger associated with a product, unless at the time the product was made the ability to discover and to eliminate the defect or danger was available and capable of use according to engineering and manufacturing practices reasonably feasible in light of existing technology.

Subsection (b) of Section 5 provides that a contractor is not liable for damages arising from a service performed for the government unless the contractor was negligent in providing the service.

Section 6 bars the application of joint and several liability in a contractor product liability or service action, except in those cases where the injury was proximately caused by two or more persons acting in concert. Instead, a contractor may be found liable only for that portion of the damages directly attributable to the contractor's proportionate share of fault or responsibility for the injury.

Section 7, subsection (a), imposes a $100,000 cap on all noneconomic damages, including pain and suffering, emotinal distress, and punitive damages. The Act imposes no limitation on the amount of economic damages, such as medical and rehabilitation expenses and lost wages.

Subsection (b) specifies that the $100,000 cap applies to all actions for damages which arise out of or were caused by the same personal injury or death.

Section 8 provides that no contractor shall be required to pay damages for future economic loss in a single, lump-sum payment where the amount of economic damages awarded is in excess of $100,000. Instead, payments may be made periodically over the period over which the loss is found likely to occur.

If the court has a reasonable basis for believing that the contractor may not make the periodic payments, subsection (b) authorizes the court to require the contractor to purchase an annuity to make such payments.

The section also provides that the court order making such periodic payments is final and may not be reopened in the absence of fraud.

Section 9, subsection (a), requires that any award of damages under the Act shall be reduced by the amount of compensation received from certain collateral sources of income received for the same injury or death.

Subsection (b) specifies the types of collateral sources which are taken into account in reducing damage awards under the Act: (1) any payment or benefit provided directly or indirectly by any Federal, State or local agency or instrumentality; and (2) any payment or benefit under a workers' compensation system or employer-funded health insurance program. Awarded damages are not, however, reduced by these collateral sources of compensation where the provider of the collateral benefits pursues (or by law is required to pursue) a right to subrogation.

Subsection (c) clarifies that the section is not intended to preempt or supersede any State law which allows for the reduction of damage awards for collateral sources other than those specified in the section, or which allows for the reduction of damages for the collateral sources specified in the section even where a right of subrogation is pursued.

Subsection (d) provides that where a person has received certain benefits under the Social Security Act prior to the judgment, the section will not threat those benefits as a covered collateral source if by doing so the section would result in that person's income being reduced for purposes of determining the period of ineligibility for those benefits.

Section 10 establishes a schedule for the size of a contingency fee an attorney may charge under the Act. The amount of the contingency fee that may be charged decreases on a "sliding scale" as the size of the damage award increases. Under the section, no attorney may receive in excess of 25% of the first $100,000 recovered, plus 20% of the next $100,000, plus 15% of the third 100,000, plus 10% of any amount in excess of $300,000.

The section also provides that where a contingeny fee is based in part on an award of damages to be paid in future periodic payments, that portion of the fee shall be based on the cost of the annuity or, in the absence of an annuity, the present value of the payments.

Section 11 declares that it is the policy of the United States to encourage (1) the use of alternative dispute resolution techniques to reduce transaction costs and prevent delay in the civil justice system, and (2) the modification of rules of evidence and the rules of civil procedure to accommodate alternative dispute resolution.

The section provides that the Attorney General shall provide to the Congress within a year of the date of enactment recommendations to implement these policies for cases filed in Federal court.

Section 12 is a severability clause which would preserve the balance of the Act if any portion of it is held to be invalid.

Section 13 provides that the Act shall become effective on the date of enactment.

Mr. THURMOND. Mr. President, I rise in support of the civil justice reform legislation introduced by the distinguished Senator from Kentucky, Senator MCCONNELL. The two bills introduced today represent an important step in recognition of the need for reform in response to the explosion of tort liability in the United States. In the last decade, we have witnessed an erosion of the traditional concepts of fault-based liability, which have been gradually replaced by no-fault and strict liability theories. These developments have significantly increased the number of lawsuits that are clogging our court system and have contributed to the dramatic increase in the number and size of monetary awards.

While the underlying causes of these developments may be debatable, no one disputes the dramatic impact that expanded tort liability has on our lives. Liability, or the fear of liability, affects the price and types of products we buy, the manner in which we conduct business, and the price and availability of insurance. These legislative proposals provide a starting point for our consideration of much-needed reform of our civil justice system.

The Government Contractor Liability Reform Act limits the liability of government contractors to ensure that the United States can obtain necessary goods and services. The Federal Tort Claims Reform Act will place reasonable limitations on government liability. Since judgments against the United States must be satisfied with revenues obtained from the American taxpayer, this bill provides an important limitation. These proposals are based on the recommendations of the administration's Tort Policy Working Group, contained in their February 1986 report. I commend the distinguished Senator from Kentucky for taking the lead in introducing these proposals and his own tort reform bills. I look forward to reviewing these bills in the Judiciary Committee and further refining these proposals to ensure fair and meaningful reform.

□ 1040

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business until the hour of 10:45 a.m., with statements limited therein to 5 minutes each.

The Senator from Tennessee.

STRATEGIC DEFENSE INITIATIVE

Mr. GORE. Mr. President, I rise to begin a series of speeches, one each day, on the subject of the strategic defense initiative. Many people might think that the time for this is not yet ripe. But I am acting out of a sense of urgency, for, in my opinion, time is on the side of those who favor SDI. And that is not because the merits of their case are improving with time: quite the contrary.

Rather, it is because we are becoming ever more enmeshed in details, while the fundamental debate we need over the wisdom of this enterprise is postponed. My great fear is that our freedom to decide what shall ultimately be done about SDI will have quietly evaporated by the time we come to the point of exercizing it.

My comments in this first speech today will be directed toward what ought to be a simple matter: the problem of defining what SDI means. All of us, of course, are familiar with what has become the classic exposition of SDI, given in the President's very first speech about it, 3 years ago. We needed, he said, to find in our technology the means to render nuclear weapons "impotent and obsolete."

That phrase may have amused some experts, but without question it cap-

tured the imagination of millions of Americans. Their belief in the brilliance of our scientists and engineers and their trust in the President have amounted to a political mandate for SDI, which, I venture to say, everyone of us in the Senate has experienced in one degree or another through our contacts with the electorate.

But, as all of us know, a mandate involves an expectation that a certain thing, having been promised, will be produced. And that is the rub. What the President promised not once, but many times, is the enormously appealing notion of sanctuary from nuclear destruction—not just for ourselves, nor even just for ourselves and our allies, but even for the Soviets—and not just from ballistic missiles, but from nuclear weapons of virtually any kind.

It was a promise that we could abandon the balance of terror; that we could base our security in the future on the ability to defend ourselves from attack, rather than on our ability to threaten others with retaliation. No President has ever expressed a more sweeping agenda for escaping the nuclear threat since the days when it was still our policy to speak about general and complete disarmament.

Unfortunately, science and engineering—though no strangers to opportunism—do not, in the end, respect such commitments if the facts just are not there. And, to be fair, we were often told during the early days of debate about the SDI, that its sole purpose was to find out precisely whether a perfected defense was in the cards.

That was certainly the spirit of the so-called "Nitze criteria." While the President spoke to the man-in-the-street, Paul Nitze appealed to the experts: he said to them that they ought not to be alarmed at the scope of SDI. The strategic defense initiative would not only uncover whether the laws of physics would support the President's dream, but whether the laws of economics would as well.

In a memorable speech, he gave assurances that—even if scientifically feasible—SDI would never be erected, unless it also proved to be cost effective; that is, less expensive for us to expand our defenses than for the Soviets to expand their nuclear arsenal.

For many students of this subject, the Nitze criteria became an integral part of what SDI was all about. More than anything else, it helped to create a more specialized, but vital, mandate from those whose skepticism might have destroyed star wars' credibility had it been expressed promptly, rather than deferred.

With time, however, it has become increasingly clear that the odds against realizing the President's goals in the near future are nil, and that the Nitze criteria are an embarassment because they are too concrete. Unfortunately, unlike any other scientific exploration, SDI is under political orders to succeed: to find, at any cost, and at any stretch of the imagination, some set of technologies which will serve to bear the name, though not fulfill any of the hopes, of what the President promised.

And so, we have entered a strange dialog with many of those working on SDI. In unison, they tell us that their objective is to determine whether it is possible to realize the President's conceptions. But the viewgraphs they show us, and the studies they submit, are all pitched to something quite different: a difference not in degree but in kind.

What we see rapidly emerging is a version of SDI—let us call it "SDI II"—comprising near-term technologies. Bear in mind that these are technologies which admittedly cannot come close to defending the population. All they might do, if they work at all, is to complicate a Soviet first-strike against United States strategic assets. Which brings us, in effect, right back to where we were in the great ABM debate of the late 1960's: asking whether taking such a step would be more likely to stimulate, rather than calm, the strategic arms race.

Now, if this shift in emphasis had been communicated by the technicians to the President, and by him to the people, that would be fair enough. But the President in fact continues to talk about his version of SDI, while, with a knowing wink and a shrug, the specialists are saying in so many words: "That's for never-never-land; pay it no mind; star wars is what we say it is, because we understand what we are talking about, and the President doesn't." It is as if they hold the President's view of SDI in intellectual contempt.

The same thing holds true for the Nitze criteria, except there the SDI managers and technocrats do not have to worry about contradicting a President. They merely come before Congress, as Secretary Weinberger has already done, and declare that the concept of cost-effectiveness has no application where SDI is concerned: that the only choice for us is something called "affordability," which means, "If you want it bad enough, you buy it, even if you can't really afford it."

Now, there is nothing new about such tactics. In another context they are well known by the term "bait and switch." You advertise one model, and when the customer shows up he has a choice of something else that costs him more for less value. It is bad enough in the show-room; it is disastrous in the conduct of the political life of a democracy. It is the American people, the source of all legitimate power in our Nation, who are being deceived.

What the President sold the public was the notion of investing some money to see if science could pull off a near miracle. He is still offering the same promise. But what others have been forced to concede is that they can only offer something of much lesser importance.

Nonetheless, it is their intention to commit this Nation to their alternative irrevocably, while the present administration is still in office. And, if, in order to succeed in their purpose, they must destroy all other alternative courses of action for the country—be they in arms control or in the development of more stable strategic forces—they are zealous to do it.

Mr. President, we must recognize that the crisis of national decison concerning SDI is therefore upon us now, rather than a decade away, and that the need to debate this question at the level of first principles is therefore of the greatest urgency.

WALTER SHEFFER: A TRIBUTE TO THE RESILIENCY OF OLDER AMERICANS

Mr. KASTEN. Mr. President, the American population is aging. More than 16 percent of our citizens in 1980 were 65 years old or older. It is estimated that that percentage will expand to more than 27 percent by the year 2050.

And that segment of our population is itself aging. The 75-plus group currently is the fastest growing group of Americans. It is increasingly likely that many of our older Americans will have surviving parents * * * four generation families are becoming more and more common * * * almost half of all persons 65 or older have great-grandchildren.

In my home State of Wisconsin, almost 13 percent of the population is 65 or older.

Mr. President, statistics like these bring two thoughts to mind.

First of all, as a society we must be prepared to deal with the physical and emotional problems of aging. Not just through increased funding for Medicare and Medicaid, and not just by protecting Social Security benefits for older Americans, but through a heightened awareness of aging and all that aging means, both to the individual and to that person's family, loved ones, and colleagues.

Second, those statistics point to an increasingly large segment of the population that is underutilized by our society.

Granted, the last two decades have witnessed a growing sensitivity to the rights of elders. Organizations such as the American Association of Retired Persons, the Gray Panthers, the National Council of Senior Citizens, National Council on Aging, and others

have heightened public awareness both of the challenges facing older Americans and what older Americans have to offer.

And, yes, the Federal Government, recognizing the strength of elderly Americans, has developed several programs that enable seniors to help others. The Service Corps of Retired Executives [SCORE] attracts many retired business people who serve as advisors for community organizations and small businesses; Retired Senior Volunteer Programs [RSVP] provides assistance in hospitals, libraries, and schools.

But, most Americans over 65 no longer work. And while some 20 percent of elderly men and 8 percent of elderly women are employed, many others might choose to work had they good health and if potential employers recognized their talents.

Surveys indicate that older employees are as productive and efficient as younger workers and that they actually miss fewer days of work and have fewer accidents on the job.

When I say underutilized, Mr. President, I mean a segment of our population that too often is cast aside as being "too old to work."

But I also mean those elderly Americans who are packed off to a hospital, or nursing home, or retirement community and forgotten by "productive" society. Many of these citizens can, through rehabilitation, overcome physical or mental disabilities, fight through diseases and illness, and once again take control of their lives and interact with their fellows.

America's older citizens are one of our greatest untapped natural resources who with proper physical care, emotional guidance, and spirited encouragement, can continue to be highly productive.

So, today I also am thinking about how we can ease the process of aging, and of how we can collectively draw on the talents, the experience, and the knowledge of this increasingly large segment of our society.

Mr. President, May is Older Americans' Month and this is National Nursing Homes Week. While we should never lose sight of the significant contributions and special talents of the elderly, this is a good time to take notice of the accomplishments of these Americans and these special care facilities.

I offer as a tribute to the resiliency of older Americans the story of Mr. Walter Sheffer.

Walter Sheffer, now 67 years old, was a household name in my hometown of Milwaukee in the fifties, sixties and seventies. He was one of the preeminent portrait photographers in that Great Lakes community, and nationally and internationally. He counted among his clients and friends such famous Americans as James Stewart, Talulah Bankhead, and Henny Youngman.

He captured on black and white film the political and social leaders of his time. His creativity and expertise in the darkroom was the source of inspiration for a younger generation of photographers, many of whom he personally instructed at Milwaukee's Layton School of Art, and for those fortunate enough to see those portraits.

In his prime, Walter Sheffer's name was frequently in the papers. He was, in the words of a fellow Milwaukean, "a successful photographer in the world of the social elite."

But that was when he was in his prime. Walter Sheffer, like so many talented, gifted individuals, suffered a setback. His came in the form of severe arthritis when he was in his late fifties.

His doctors told him he would never walk again, that the best he could look forward to was life in a wheelchair. Seven years ago, ailing and desolute, he became a resident of the River Hills East Nursing Home in Milwaukee and abandoned any thought of ever again practicing his craft.

But Mr. Sheffer's story did not end in a wheelchair in the River Hills East home. For the overriding emphasis at River Hills East, as it is in so many nursing homes, is the rehabilitation of its residents. For many residents, it may mean simply learning again how to feed oneself, or how to bathe oneself, or how to keep a room clean.

For Walter Sheffer, it meant reopening the door he had closed to a talent Milwaukeans had enjoyed for years.

About 2 years ago, Mr. President, a Milwaukee artist by the name of Sue Bartfield went to River Hills East to do a project for Jewish Vocational Services, a group that works with the disabled by getting them involved in the arts. Among the River Hills East residents that she interviewed for this project was Walter Sheffer.

Sue Bartfield recognized who he was, and, with the guidance and encouragement of the nursing home staff, began to pull Walter Sheffer out of his shell and back into a productive life.

She worked with Walter daily, bringing him new clothes, driving him around town, talking to him about his craft and her interest in learning photography. Perhaps it was the teacher in Walter, perhaps it was the emotional union with a fellow artist, perhaps it was the special sharing between the generations, whatever it was, Walter responded.

One afternoon when Sue came to visit, Walter had his camera equipment out of storage. Another day, he had some of his old photographs there for her to see. Finally, he set up his dark room equipment and began in earnest to create again the stunning, emotion-packed photographs for which he had been so famous.

And suddenly what had been, what was only past glory, became a new reality for Walter Sheffer.

With the help of River Hills East, he worked through the pain of arthritis, determined not to be wheelchair-bound.

With Sue Bartfield, he embarked on a new photographic essay on older Americans. That essay, called "The Faces of Aging," premiered in Milwaukee in 1985 and since then has been shown in Illinois and California.

Tonight, Walter Sheffer and "The Faces of Aging" will be honored at a reception at the National Council on Aging's Art Gallery at 600 Maryland Avenue. I urge my colleagues to attend and see this critically acclaimed photographic essay.

His coming to Washington is especially meaningful to me, because Walter Sheffer photographed me with my brother and two sisters when I was in high school in Milwaukee. That photograph is in my office here on Capitol Hill.

Mr. President, Walter Sheffer's journey back to a productive life has been dramatic. He now plays organ for his fellow River Hills East residents at breakfast each day. He is the president of the home's gardening club. He takes pictures for the in-house newsletter.

And he has brought to the residents of this Milwaukee nursing home a new dignity as these men and women enjoy the anonymous acclaim of having their faces seen by countless Americans who are learning through them of the pain, the joys, the dignity of growing old.

The story of Walter Sheffer is a story repeated countless times in many nursing homes throughout America. Every day, men and women considered too old or too debilitated or too ill to care for themselves are becoming self-sufficient. Many even leave the nursing home to return to their families.

As one nursing home official told me, "The misconception about nursing homes is that people never get better; people just get old, go there and die. But our home is like a revolving door. They come, and they go back out again. And many of those who can't leave, for physical or emotional reasons, still can realize tremendous growth. They run the gift shop; they help serve the lunches * * * they become extremely active and they have responsibilities."

Mr. President, that is the fundamental lesson of the Walter Sheffer story. The acclaim his rehabilitation is receiving may not be typical for other older Americans, but it is an example of their resiliency, and of their ability

to find new avenues of expression and vitality.

I applaud Walter Sheffer and his successful struggle to return to a productive life. And in this national Older Americans' Month, I congratulate all elderly Americans for their contributions—past, and present, and future—to the strength of our society.

DEATH OF MARY GOHLKE

Mr. DECONCINI. Mr. President, I was saddened to learn of the death of Mary Gohlke. On March 9, 1981, Mary Gohlke became only the fourth person in history to receive a heart-lung transplant.

Transplant operations are commonplace today, but that was not the case 5 years ago. Mary, of Scottsdale, AZ, contacted my office when she was diagnosed as having cardiopulmonary hypertension. With the assistance of a then-new medication, the experimental operation could be done. That experimental operation added 5 years to Mary's life.

Doctors were skeptical and, previous to Mary, the longest living recipient of a heart-lung transplant survived only 23 days—the odds were not exactly in Mary's favor. But Mary wanted to live more than she wanted to die and she defied those odds. After her operation she became an outspoken advocate for organ donation.

Over 140 heart-lung transplant operations have been done since Mary's surgery. She has given more to this world than she could possibly take. Her bravery serves as a beacon to those in similar situations who face certain death, and has proven that with determination and strength, almost anything is possible. Mary's message was simple, "Don't quit!" Mary didn't quit; she fought until the very end.

OBANDO Y BRAVO SPEAKS OUT

Mr. DENTON. Mr. President, yesterday's Washington Post carried an article by the courageous archbishop of Managua, Cardinal Obando Y Bravo. Having met with the cardinal on several occasions, both here in Washington and in Managua, I wish to bring his writing to my colleagues' attention. I know him to be a humble man, a man of great courage, and a man of great faith, faith not only in God but in his people.

Furthermore, notwithstanding the naked efforts of the Sandinista regime to discredit and isolate him from his flock, Cardinal Obando Y Bravo has remained a hero to the repressed and abused majority in Nicaragua. His stalwart defense of freedom and his unwillingness to be manipulated by the political forces at work in Nicaragua has made with a true shepherd and a beacon of hope for the Nicaraguan people.

In his article, the cardinal clearly describes the precarious situation of the Catholic Church in Nicaragua. I am deeply moved by his statement:

I felt then that I ought to tell the truth and speak as a prophet speaks, even at the risk of being a "voice that crieth in the wilderness." I would explain to those that have ears to hear the sensitive situation of our Church and the serious danger we place ourselves in simply (by) speaking out.

He then does not hesitate to explain the reality of Nicaragua today, where thousands flee from Sandinista tyranny and those who remain suffer under, and I quote, "The most terrible violation of freedom of the press and of speech in the history of our country." In eloquent words, which become almost a plea, he calls our attention to "the progressive and suffocating restriction of public liberties of an interminable national emergency law and the continual violation of human rights."

Cardinal Obando y Bravo's call is for reconciliation, for the genuine dialog that has been categorically and repeatedly rejected by the Sandinista regime. Our task, in guiding United States policy toward Nicaragua, must be to help bring about that dialog.

The carginal carefully explains that he cannot comment on the content of U.S. policy, and why he cannot do so. We cannot use him to sanction our decision. Whichever side we are on, he will justify us. But the courageous cardinal has made sure that we will have the facts upon which to base our decision.

I only hope that my colleagues will choose to act for freedom in Nicaragua rather than to acquiesce in the further and permanent enslavement of the Nicaraguan people.

Mr. President, I ask unanimous consent that the text of Cardinal Miguel Obando y Bravo's article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NICARAGUA: THE SANDINISTAS HAVE GAGGED AND BOUND US

(In an effort to illuminate the internal Nicaraguan scene while Congress is considering whether to resume military aid to the Nicaraguan contras, we invited Cardinal Miguel Obando y Bravo, archbishop of Managua, to give his views)

Your message asking me for an article arrived on Sunday, April 13, just as I finished celebrating Mass, and my first decision was not to grant your request. I must not confuse my pastoral mission with others, however worthy, such as politics or journalism, which are different from the mission that our Lord has entrusted to me. But, I am not obligated to keep silent either. As a man, as a citizen, as a Christian and even as a bishop, I have certain duties that I must fulfill, and these duties compel me to grant your request.

In the Mass I just celebrated, I had to announce, with great sorrow, that some of the offices of the Curia, occupied by the State Security Police since October 1985, had been confiscated by government order, despite the fact that they were built on land occupied by the Apostolic Nunciature.

In these offices there was a small printing press donated by the German Bishops' Conference, which was used to print our bulletin "Iglesia," a strictly intra-ecclesiastical publication. Both the press and the bulletin were seized by the State Security Police, along with all the files, including baptismal records and my own personal seal.

During the Mass, I read the pastoral letter which we, the bishops of Nicaragua, had written for Holy Week. The pulpit was now our only means of disseminating information, because the letter was totally censored and pulled from the pages of the newspaper La Prensa, the only private newspaper in the country, which attempted to publish it, but in vain. We believe that the reason for the censorship was that for the second time we called all Nicaraguans to reconciliation and dialogue as the only way to peace.

It was also announced that the Sunday bulletin with the prayers and texts for the day would not be available because it was confiscated and that my Sunday address would not appear in La Prensa, which, under the heading "The Voice of Our Pastor," had been published for many years in that newspaper, because it too had been censored, despite the special care taken to exclude from it anything that could serve as the remotest excuse for censorship.

"Radio Catolico," the only Catholic radio station, had been closed by the State several months earlier. It was at this point, when the Church was gagged and bound, that your request arrived.

The reading for the day, taken from the Acts of the Apostles, was about an incident that pricked my conscience. The Sanhedrin sent for Peter and John, intending to force them into silence. "But Peter and John said to them in reply: 'Is it right in God's eyes for us to obey you rather than God? Judge for yourselves. We cannot possibly give up speaking of things we have seen and heard' " (Acts 4:18-20).

I felt then that I ought to tell the truth and speak as a prophet speaks, even at the risk of being a "voice that crieth in the wilderness." I would explain to those that have ears to hear the sensitive situation of our Church and the serious danger we place ourselves in simply by speaking out.

I am reminded of the incident related in the 22nd chapter of Matthew: "Then the Pharisees went away and agreed on a plan to trap him in his own words." The method they chose was to appeal hypocritically to His spiritual authority, saying: "Master, you are an honest man, we know; you teach in all honesty the way of life that God requires. . . . Give us your ruling on this: are we or are we not permitted to pay taxes to the Roman emperor?" Jesus was aware of their malicious intention and said to them: "You hypocrites! Why are you trying to catch me out?"

History repeats itself, and this is the situation of the Nicaraguan Bishops, a situation that we denounced in our recent pastoral letter. An appeal is made to our moral authority and to our position as spiritual leaders of the people. We are asked to make a statement on an extremely sensitive political matter, but the real objective is not to seek moral guidance, but rather to use our statement to manipulate opinion.

If Jesus had answered that taxes should be paid to Caesar, He would have become a collaborator of the occupying Roman imperialists. If He had answered no, He would have become a criminal and an agitator who violated the laws of the land. If He had not answered at all, He would have lost His authority in the eyes of the people.

We are asked to issue a statement against U.S. aid to the insurgents. The state-controlled communications media, the organizations of the masses in the service of the system and their allies in the so-called People's Church and the minister of Foreign Affairs, Father Miguel d'Escoto, are all clamoring for our statement. But, as I mentioned, it is not moral guidance that is sought, since on several occasions our Conference of Bishops has already stated that it was against any outside interference, whether by the United States or the Soviet Union. (Pastoral letter of April 22, 1984). The intention is to use the statement to manipulate.

While no effort was spared in suppressing our earlier statements, this statement would be given international publicity. Not for the faithful—but for the U.S. Congress. But we are not pastors to the Congress of the United States.

If we were to support military aid to the insurgents, we would be persecuted as traitors. If we opposed aid, we would be accused of taking sides, which would automatically disqualify us as pastors to all of the people. If we remain silent, our silence would be considered guilty, the silence of complicity.

It can be argued that the U.S. Conference of Bishops has more than once issued statements on political matters. But there is one big difference: the U.S. bishops' statements are made freely, they are addressed to their own people and their purpose is to provide moral guidance. They can make such statements in complete freedom, and they can give their reasons, with full access to the communications media. Their words are not censored, twisted or distorted. But above all, their statements do not make them criminals and traitors to their country.

In Nicaragua any dissident from the Sandinista cause can be placed outside the law through an ingenious distortion of the truth:

The government, with all the media under its control, has taken great pains to convince the outside world that what is happening is essentially a direct attack by the United States on our country. That there is a war, open or covert, between the two countries, and, consequently, any form of assistance to the enemy, whether material or moral, is punishable by law.

Along the same lines, and with equal insistence, it rejects both the idea that an East-West conflict has made of our country a disposable card, a pawn in the game between the superpowers, and the reality of a civil war: an enormous number of Nicaraguans oppose with all their might the turn taken by a revolution that has betrayed the hopes of the Nicaraguan people and even its own promises.

To accept the reality of an East-West conflict would be to admit that the Sandinistas are just as much the tools of Soviet interests as the insurgent forces are of the United States. If this is accepted, aid from the one is equally as deplorable as aid from the other. It would necessitate the withdrawal of the Soviet and Cuban advisors, as well as the withdrawal of all U.S. Military aid.

If the reality of an internal conflict between Nicaraguans is admitted, the conclusion could not be avoided that the insurgent dissidents are now in the same position that the Sandinistas themselves once occupied, and, consequently that they have the same right that the Sandinistas had to seek aid from other nations, which they in fact did request and obtain in order to fight a terrible dictatorship.

To accept this would mean giving the insurgents the title of "rebels," a title that the Sandinistas proudly gave to themselves in former days.

The only possible argument against this is that unlike the Somozan dictatorship, which the Nicaraguan people fought almost unanimously, this is a democratic government, legitimately constituted, which places the interests of the Nicaraguan people above any ideological struggle or international cause, seeks the welfare and peace of the people and enjoys the support of an overwhelming majority.

Unfortunately, this is not true either. To accept this as the indisputable truth is to ignore the mass exodus of the Miskito Indians, who, on numerous occasions, fled in the thousands, accompanied by their bishop, Salvador Schlaeffer. It is also to ignore the departure of tens of thousands of Nicaraguan men and women of every age, profession, economic status and political persuation. It is to ignore that many of those who are leaders or participants in the counterrevolution were once leaders or members of the Sandinista front or were ministers in the Sandinista government. It is to ignore the lack of any justification for the most terrible violation of freedom of the press and of speech in the history of our country. It is to ignore the progressive and suffocating restriction of public liberties, under the cover of aninterminable national emergency law and the continual violation of human rights. It is to ignore the expulsion of priests and the mass exodus of young people eligible for military service. * * * None of this is true of a government that has the sympathy and general support of the people.

And this is what the Nicaraguan bishops wish to state:

"It is urgent and essential that the Nicaraguan people, free of foreign interference or ideologies, find a way out of the situation of conflict that our country is experiencing.

"We reaffirm today, with renewed emphasis, what we said in our patoral letter on Easter Sunday, April 22, 1984:

"Foreign powers are taking advantage of our situation to promote economic and ideological exploitation. They view us as adjuncts to their own power, without respect for our persons, our history, our culture and our right to determine our own destiny.

"Consequently, most of the Nicarguan people live in fear and are uncertain about the future. They feel deeply frustrated. They cry out for peace and freedom, but their voices go unheard, drowned out by militaristic propaganda on every side.

"We feel that any form of assistance, regardless of the source, which causes the destruction, suffering and death of our families, or which sows hatred and discord among the Nicaraguan people is reprehensible. To choose annihilation of the enemy as the only possible way to peace is inevitably to choose war."

The Church proposes reconciliation through dialogue as the only real solution, the only way to peace, and maintains, in the words of His Holiness John Paul II, in his visit to El Salvador in March 1983, that this dialogue ". . . is not a delaying tactic to strengthen positions prior to continuing a fight, but rather a sincere effort to respond, by seeking appropriate solutions to the anxiety, the pain, the weariness and the fatigue of the many who yearn for peace. The many who wish to live, to rise again from the ashes, to seek warmth in the smiles of children, free from terror and in a climate of democratic cooperation."

This is the text that was censored by the Sandinista government.

We are asked to issue a statement against aid, the Church and the position of our Conference of Bishops, which is trying to guide the Church through turbulent waters, more by the spirit than by the natural sciences and politics of man, which do not seem to hold any solution for such difficult problems. We are in a difficult situation, but we place our faith and trust in the Lord Jesus, the Prince of Peace and the Lord of History.

FINANCIAL DISCLOSURE OF SENATOR SIMON

Mr. SIMON. Mr. President, it has been my practice during my service in Congress and in previous public service to make available a detailed accounting of my income, assets, and liabilities. I ask unanimous consent that my financial statement for 1985 be printed in the RECORD for this purpose.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATOR SIMON DISCLOSES FINANCES

WASHINGTON.—For the 31st consecutive year that he has held public office, U.S. Sen. Paul Simon, D-ILL., has released a detailed description of his income, assets and liabilities.

Simon has been making the voluntary annual statements since he entered public service as a state representative in 1955. He followed the practice during eight years in the Illinois House of Representatives, six years in the Illinois Senate, four years as lieutenant governor and ten years in the U.S. House of Representatives. The listing predates disclosure requirements of state and federal law and continues to exceed those requirements.

Simon also made public the detailed financial disclosure report of his administrative assistant, former Congressman Floyd Fithian, available upon request.

The Illinois senator lists 1985 gross income for himself and his wife, Jeanne, totaling $162,416.67—up from the Simons' income of $112,770.35 in 1984. The figure includes his House and Senate salary, reimbursement for travel and other expenses, rental income, honoraria for appearances, and other items.

The Simons had assets of $398,673 and liabilties of $287,597 for a net worth of $111,076.

Income and net worth statement of Paul and Jeanne Simon—1985

Income:	*Amount*
Salary, U.S. Senate	$74,683.00
Salary, U.S. House of Representatives	6,467.00
State of Illinois, General Assembly System	17,604.00
Book royalties	1,646.00

Consultant fees (Jeanne):	
Meridian House International	2,000.00
American Association of Retired Persons	3,100.00
America, Article (Jeanne)	175.00
U.S. Senate, expense reimbursement	17,881.00
Paul Simon for Senate Committee, expense reimbursement	416.00
B&T Enterprises	144.00
Total	124,116.00

Honoraria and travel reimbursements:	
Wall Street Journal, article	150.00
National Association of Independent Insurers, talk	1,000.00
National Association of Secondary School Principals, talk	500.00
The Washington Caucus, talk	500.00
United Church of Christ (Washington), talk	100.00
Schulman Management Co. (California), talk	2,000.00
Missouri Democrat Days, talk	1,000.00
American Podiatric Medical Association, talk	2,000.00
American Trucking Association, talk	1,000.00
National Association of Postal Supervisors, talk	1,000.00
American Association of State Colleges and Universities, talk	1,000.00
National Education Association, talk	2,000.00
Princeton University, talk	250.00
Southern Minnesota District of the American Lutheran Church, talk	500.00
United Parcel Service, talk	2,000.00
United Jewish Appeal, (Massachusetts), talk	1,000.00
B'Nai Israel Congregation (Maryland), talk	750.00
Marycrest College (Iowa), talk	850.00
Union of American Hebrew Congregations (Washington), talk	200.00
Institute of International Education, talk	200.00
College of Charleston (South Carolina), talk	1,198.01
Roanoke College (Virginia), talk	1,000.00
American Jewish Congress (New York), talk	101.00
Pfizer, Inc., talk	2,000.00
Letter Carriers Political Fund, talk	500.00
Seyforth, Shaw, Fairweather & Geraldson (Washington), talk	1,000.00
Motion Picture Association of America (California), talk	2,000.00
Brookings Institution (Washington), talk	300.00
Boston Globe, article	200.00
Farm Credit Banks of St. Louis, talk	2,000.00
National Council of Educational Opportunity, talk	1,000.00
New York Times, article	150.00
Akin, Gump, Strauss, Hauer & Feld (Washington), talk	2,000.00
American Jewish Committee (California), talk	2,000.00
U.S. Chamber of Commerce, talk	500.00
American Association of Community and Junior Colleges, talk	500.00
Chicago Magazine, article	1,000.00
Brotherhood of Railroad Signalmen	26.67
Total	[1] 36,235.67

Interest income:	
Franklin Fund	61.00
U.S. Senate Federal Credit Union	254.00
General American Insurance	96.00
Polish National Alliance Insurance	6.00
NCNB Bank of Florida	8.00
Total	425.00

Dividends:	
Adams Express	81.00
Bethlehem Steel	2.00
Crown Zellerbach	6.00
Dreyfus Fund	1,151.00
Gulf & Western	1.00
Harper & Row	8.00
Lear Siegler	18.00
Pacific Gas & Electric	356.00
Ralston Purina	12.00
Scott Paper	5.00
Total	1,640.00

Net worth statement:	
Assets:	
University Bank, checking account	11.00
U.S. Senate Federal Credit Union, checking account	426.00
NCNB National Bank of Florida, savings account	207.00
Loan to Senator Paul Simon office account	2,000.00
U.S. Savings Bonds	2,831.00
Chirstian Church of Salem, bond	250.00
General American Life Insurance, cash value	3,519.00
Polish National Alliance Insurance, cash value	1,681.00
Congressional Retirement System, cash value	59,010.00
Condominium, Tarpon Springs, FL, 1979 purchase price	81,000.00
Improvements to condominium	214.00
B & T Enterprises	10,000.00
11.8 acres near Makanda, IL, purchased 1978	21,500.00
Home at Makanda property, constructed 1981-82	142,265.00
Improvements to Makanda property	7,074.00
Furniture and Presidential Autograph Collection	18,000.00
1983 Ford Mustang	6,000.00
1980 Chevrolet	2,000.00
IRA, Paul	10,698.00
IRA, Jeanne	5,016.00
Total	373,702.00

Stock and bond holdings with number of shares (as of December 31, 1985):	
Adams Express, 109	2,112.00
Bethlehem Steel, 5	78.00
Borman's, 8	96.00
Chock Full O'Nuts, 10	92.00
Crown Zellerbach, 6	247.00
Dreyfus Fund	14,452.00
Franklin Money Fund	664.00
Gulf & Western, 1	49.00
Harper & Row, 15	336.00
Lear Siegler, 8	952.00
Intergroup Corp, 25	250.00
Pacific Gas & Electric Co., 200	4,000.00
Pax World Fund, Inc	250.00
Ralston-Purina, 12	564.00
Rohr Industries, 6	174.00
Scott Paper, 4	203.00
United M & M, 8	152.00
Jet-Lite, 120 (approxmate value)	300.00
Total	24,971.00

Liabilities:	
University Bank, Carbondale, note	24,700.00
First National Bank of Collinsville, note	44,699.00
Crossland Federal Savings & Loan Association, mortgage	55,636.00
Polish National Insurance, loan	1,392.00
General American Insurance, loan	3,021.00
First Federal Savings & Loan, mortgage	110,849.00
Crossland Savings & Loan, note	13,276.00
Community Trust, Irvington, note	15,524.00
First Federal Savings & Loan, note	4,000.00
DuQuoin State Bank note	14,500.00
Total	287,597.00
Total assets	398,673.00
Total liabilities	287,597.00
Net worth	111,076.00

[1] Honoraria are limited to $22,405. The amount over that has been donated to charities.

Gifts received of more than $25 value outside of immediate family members:

Steak knives from the United Transportation Union, value not known.,

Book, *Building a National Image*, from Robert Daniell of Hartford, Ct., value not known.

Four-volume *History of Illinois Democrats* from Stan Glass of Chicago, value not known.

Suitcase from Simon Senate staff and friends, value not known.

FOUR LITTLE PAGES

Mr. EAGLETON. Mr. President, the State of Missouri has a longstanding and diverse theatrical tradition. Each year, Missourians are treated to many outstanding new productions and revivals.

I rise today to extend to my colleagues a chance to sample some of that wonderful Missouri creativeness. Next week, in Washington, DC, there will be a presentation of the musical "Four Little Pages," a 25-minute celebration of our approaching constitutional bicentennial. A native St. Louisan, David Chambers, is the coauthor and lyricist of this work. "Four Little Pages," is sponsored by the National Park Service and is the first national program to inform and involve the public in the upcoming bicentennial.

St. Louisans and Washingtonians both are familiar with Mr. Chambers' work: He is currently producing director at the Repertory Theatre of St.

Louis, and from 1979 to 1981, he served as producer at Washington's Arena Stage.

I encourage my colleagues to add this production to their schedules. As the bicentennial of our Constitution draws nearer, it is appropriate that we pause for a moment to reflect on its meanings and to join in a public reaffirmation of its tenets.

NATIONAL SCIENCE WEEK

Mr. HATCH. Mr. President, yesterday at 1:30 e.s.t., 175,000 helium balloons filled with weather tracking cards were launched all over the country to kick off the celebration of National Science Week. Hundreds of schools, scientific associations, civic organizations, and corporations participated with the National Science Foundation in this balloon launch. These groups will also be sponsoring and participating in many other activities during the week to draw attention to the key role science, mathematics, and engineering play in advancing our quality of life and economic prosperity.

In my own State of Utah, a number of events to promote National Science Week have been organized. The School of Natural Science at Weber State College in Odgen, UT, is hosting a number of guest lectures, seminars, and tours for the public. The Hansen Planetarium is sponsoring a series of science demonstrations. Schools throughout the State are holding science fairs, inviting panels, and guest speakers, and having poster-design contests to emphasize the use of science in our everyday lives.

National Science Week encourages us, especially our young people, to become aware of and involved in science, mathematics, engineering, and technological fields. Although we as a nation have a strong scientific and technological base, as Mr. Erich Bloch, Director of the National Science Foundation, points out, "our future depends on our continuing progress in science and technology." As the world becomes more dependent on advanced technology, science, and engineering become more vital to our Nation's welfare and competitiveness. It is important to encourage our young students to study and pursue careers in the science and technology fields because they will be the scientists, researchers, teachers, and engineers of the future.

I want to thank my colleagues who have joined me in sponsoring this resolution. I would also like to congratulate the National Science Foundation, the various scientific and civic organizations, and the corporate sponsors, including the Amoco Foundation, Atlantic Richfield Foundation, the Dow Chemical Co. Foundation, Du Pont Co., Eastman Kodak Co., the General Electric Foundation, and IBM, for their excellent efforts in organizing the festivities and disseminating information about National Science Week. This will be an exciting and eventful week.

WILLARD MARCHING TIGER BAND

Mr. EAGLETON. Mr. President, I am pleased to rise today to honor a group of Missourians soon to embark on a trip to Great Britain. On Saturday, June 7, the Willard Marching Tiger Band will compete in the 43d Annual Hornchurch Competition held in Havering, England. They will be accompanied to the competition by some 200 of their friends and relatives from their hometown.

I can think of no one to better represent our country than this wonderful group. Willard is a small town in the southwest corner of Missouri. It has been a privilege to serve as their Senator. Their school system is recognized as one of the best in the State, and so too is their band program which is the recipient of numerous awards.

I invite my colleagues to join me in wishing the Willard Marching Tiger Band, its directors, parents, and friends every success at the upcoming Hornchurch competition. May their travels be safe and enjoyable.

SENATOR BYRD: ENERGY LEADER

Mr. MATSUNAGA. Mr. President, I rise to bring to the attention of my colleagues a singular recognition which our distinguished minority leader, Senator BYRD, received here in Washington last week. Along with a number of colleagues from this body and the House and several hundred business executives from throughout the country, I was most privileged to witness the presentation.

The senior Senator from West Virginia was the recipient of the 1986 Energy Leadership Award presented by the organization Americans for Energy Independence at a dinner last Wednesday evening. Former majority and minority leader of the Senate, Senator Howard Baker of Tennessee, serving as honorary chairman for the occasion, presented the coveted award to his former counterpart, whom he described as one "who more than anyone alive embodies the traditional and true spirit of the U.S. Senate."

The award is one which the minority leader richly deserves, for, as the award citation noted, Senator BYRD has seen our Nation's energy situation change "from innocent bliss to mindless panic to skeptical neglect" and through it all he has "maintained a steadfast belief in basic principles about the U.S. energy picture that would have served this country well, had they been heeded."

The citation further read, in part:

A country dependent on energy sources which may not be available in a crisis is a country with one hand tied behind its back. Senator BYRD has always supported a strong national defense that relies on adequate domestic energy resources that are benign and economic. For his steadfast support of this eminently sensible policy, Americans for Energy Independence is proud to honor Senator ROBERT C. BYRD with the Energy Leadership Award for 1986.

Mr. President, as the author of the Clean Coal Technology Program, recently enacted into law, the distinguished minority leader, the senior Senator from West Virginia, is indeed a champion of energy resources "benign and economic," and this Senator from the Aloha State, which serves as our Nation's energy laboratory of the Pacific, is proud to be his friend and colleague and to be under his leadership.

In accepting the award, Senator BYRD struck a very optimistic note about America's capability to meet its energy needs of the future. Mr. President I ask unanimous consent that Senator BYRD's remarks be printed at this point in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

REMARKS OF U.S. SENATOR ROBERT C. BYRD UPON ACCEPTING THE 1986 ENERGY LEADERSHIP AWARD PRESENTED BY AMERICANS FOR ENERGY INDEPENDENCE

Mr. BYRD. Amidst all the media attention to the various aspects of the current oil situation, another event of far greater long-term signficance received little or no media attention. On April 18th, the U.S. Synthetic Fuels Corporation quietly closed its doors.

The establishment of a National Synthetic Fuels Program was an investment in an insurance policy for the next decade and beyond—to develop alternative energy sources from coal, oil shale, and tar sands. But the SFC was a victim of the allure of falling oil prices and of the same kind of mindless budget slashing that has cut other investments in America's future—such as education. The concern for the long-term energy situation was dissipated by falling oil prices and the disarray in OPEC, and near-term imperatives prevailed.

What about other energy alternatives for the future? The nuclear disaster at the Chernobyl powerplant in the Soviet Union may not be particularly reassuring to those pondering the fate of civilian nuclear power in the United States.

What about the use of coal, our most abundant fossil energy resource? The outlook for the use of coal in the United States may be very uncertain in part because of the pressures in the Congress to enact acid rain legislation. Congress would be most unwise to enact legislation which will not only devastate the economies of coal-producing States, but which may lead to a decline in the production of America's number one energy resource.

There is, however, hope for the use of coal. Congress has enacted the Clean Coal Technology Program which I introduced last year. This program could become the cornerstone of a far more prudent, less disruptive approach to the use of coal. The

Clean Coal Technology Program provides the basis for the commercial acceptance of new and advanced technologies to use coal in an environmentally acceptable manner. The use of such technologies will not disrupt traditional markets for coal, or force coal-mining communities to become ghost towns. Indeed, the Clean Coal Program will produce jobs, cleaner air, and energy for the future.

In Shakespeare's "Macbeth," the three weird sisters forecast Macbeths' downfall with the engimatic lines:

"Macbeth shall never vanquish'd be until great Birnam Wood to High Dunsinane Hill shall come against him."

Certainly, the potential dangers of today's energy situation are far more evident than were the dangers to Macbeth. I hope that, unlike Macbeth, we can better perceive the future—that we will use our past experience to force long-range energy policies on tomorrow's realities instead of on today's fantasies. Let us continue our efforts for America's self-sufficiency, so that we do not again fall victim to a crippling addiction to doubtful foreign energy supplies.

This is a national goal of considerable significance for the future of this Nation. And in that regard, I wish to commend Americans for Energy Independence for their efforts to educate Americans about the Nation's energy situation, and the importance of energy independence. Over the years, Americans for Energy Independence has been performing a public service worthy of note. You are to be applauded for your efforts on behalf of the energy security of the United States.

PRESIDENT MUBARAK AND CAMP DAVID

Mr. DECONCINI. Mr. President, John F. Kennedy remarked that the courage of life is often a less dramatic spectacle than the courage of a final moment; but it is no less a magnificent mixture of triumph and tragedy. He went on to say:

For without belittling the courage with which men have died, we should not forget those acts of courage with which men have lived.

There is no better description capturing the passing of the torch in leadership from Anwar Sadat to Hosni Mubarak. We were all aware of President Sadat's genuine commitment and diligent dedication to the Camp David accords and Middle East peace. He sacrificed his life for it. Recently, President Mubarak commented on the collapsed Arab summit talks, mocking the efforts of Syria and Libya to invoke a collective Arab defense pact when they supported Iran in its war against Iraq. He also criticized the Arab League for excluding Egypt since it made peace with Israel in 1978.

President Mubarak went on to defend the Camp David accords, saying:

God knows that deep in their hearts, the other Arab countries wished they had Egypt's courage to make peace instead of living in a vicious and impotent circle for the past 7 years.

I commend his determination and style. While we criticize Saudi Arabia for its invisible contribution to Middle East peace and label the Saudis a "moderate Arab state," President Mubarak explicitly conveys, articulates, and demonstrates Egypt's friendship to the United States and deserves our applause. In the most politically sensitive and volatile region in the world, President Mubarak epitomizes Hemingway's definition of guts—grace under pressure.

I would also like to share with my colleagues some comments made on an Egyptian radio station in Cairo. These specifically address Libya and Syria. I ask unanimous consent that the comments be printed in the RECORD.

There being no objection, the comments were ordered to be printed in the RECORD, as follows:

CAIRO RADIO STATION COMMENTS: LIBYA, SYRIA CRITICIZED

Even if there were heated foreign schemes aimed at weakening and paralyzing the Arab homeland, the cancer that infects the Arab world and burrows into its body, its flesh, and bones, is more destructive and devastating than any foreign plot. This cancer is Arab regimes such as Syria and Libya, who have fragmented and exhausted the Arab body.

The conspiratorial Syrian regime is turning fraternal Arab Lebanon into a feeding ground to satiate its narrow, regional hungers and desires. This regime is trying to achieve these things at the expense of Lebanon's unity, security, and independence, and also at the expense of the supreme interests of the Arab homeland and its vital issues.

The Lebanese and Syrian people are not the only Arabs living in a nightmare because of the policy adopted by the ruling regime in Damascus. The Libyan Arab people also are living under a grotesque regime, which is fond of terrorism and the color of blood. This regime is not only practicing terrorism against neighboring Arab states and peoples, but also against fraternal and friendly states throughout the world, and against the Libyan people as well. The Libyan people are not living with the most serious tragedy they have ever witnessed in their history. Qaddafi's regime has become a symbol of terrorism, of which he is fond and which he is practicing. This terrorism was the reason for the confrontation between the United States and Libya, in which many innocent Libyans fell victim. This confrontation was a serious escalation of the situation in the Mediterranean and it added more heat to the already serious and active fires in the region.

TRIBUTE TO CONGRESSMAN SILVIO CONTE

Mr. KENNEDY. Mr. President, on May 3, 1986, the Boston College Law School Alumni Association bestowed the St. Thomas More Award for 1986 on Congressman SILVIO CONTE—one of its most distinguished alumni. SIL CONTE is a man of rare talent and spirit whom I will always cherish as a friend and respect as one of the finest legislators and statesmen of our time.

SIL CONTE has truly distinguished himself throughout his long and brilliant career in public service. For 28 years, he has served the First District of Massachusetts with a dedication and diligence that is without equal.

His years at Boston College and Boston College Law School, which make him a distinguished "Double Eagle," fostered his tireless devotion to the cause of law and humanity.

Without question, SIL CONTE holds a very special place in the hearts of those of us who are fortunate enough to know him. He richly deserved this tribute from his alma mater.

In his honor, I ask unanimous consent that his remarks upon receiving the St. Thomas More Award be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

REMARKS OF HON. SILVIO O. CONTE AT PRESENTATION OF SIR THOMAS MORE AWARD FROM BOSTON COLLEGE LAW SCHOOL, BOSTON, MASSACHUSETTS

Friends, alumni, distinguished guests—I humbly thank you for bringing me back here today to my beloved alma mater for this truly special award.

When I first learned that Boston College Law School had chosen me to receive the Saint Thomas More Award, its highest honor, I paused not only to reflect on this great gesture but on the man in whose name the award was given.

What I found in Thomas More's actions and writings brought the award very close to home and gave me pause to consider elements of myself, this institution and the Congress—my great love—that I had not considered before.

Sir Thomas More was first and foremost a man of fervent spirituality.

Thomas More believed in his God, he believed in moral righteousness, he believed in his heritage and, perhaps most importantly, he believed in himself.

These beliefs enabled him to relinquish a life of material wealth and accept a death sentence from the king he had nobly served.

When Thomas More refused to take the oath for the Act of Succession and Supremacy, he relinquished career achievement and material gain for a higher cause—his Catholic church and his Christian God.

It is this belief in a higher presence, a greater good, that enables us all to achieve notable things in life.

Bestowing upon me an award named for Saint Thomas More is the greatest honor I can conceive. To be mentioned in the same breath with this saint, scholar and truly great human being is overwhelming.

Like Thomas More, I too have searched many times deep within myself—during 28 years in the U.S. Congress—for answers to seemingly unanswerable questions.

It was my belief in the goodness within others and a confidence in my own abilities that helped me rise to the challenges of political office.

And it was a belief in God that made the toughest times bearable.

The inner cry for good is not always easy to answer and, as Sir Thomas More demonstrated, can exact a heavy price.

As a national legislator, I am often called on to make decisions that affect literally millions of people.

Those decisions, and there have been so many over the past 28 years, don't always come from experience or position papers or

from staff experts—or even from common sense.

Most times those decisions come straight from the heart.

I remember many long walks alone through the empty halls of the Capitol in the early hours of the morning searching for answers.

There was one particularly tough dilemma, in my second term, during President Kennedy's first year as President. The Rules Committee was controlled by conservative Southern Democrats and Republicans who were bottling up President Kennedy's legislative agenda.

He wanted to enlarge the Rules Committee so he could get his legislation to the House floor. It became a party issue with the coalition of Southern Democrats and Republicans against the expansion.

In those days, young Congressmen kept their mouths shut and did what they were told to do. Taking a stand on this particular issue—voting my conscience—would cost dearly.

I went to bed very late that evening, genuinely perplexed about what I would do on the House floor the next morning. I hardly slept at all and I got up very early, still tossing the issue over and over in my mind.

But on the walk from my office to the Capitol, that morning, I stopped for some reason at the reflecting pool near the west entrance. The morning sun was bright, the air still, and I could see my reflection clearly in the shallow waters of the pool.

What I saw went beyond the reflection in that pool to the very essence of my being. And I could see, at that moment, the answer to my quandary.

Something about that moment—something spiritual brought a new understanding, unleashed that inner strength that I had searched for. And I knew what I had to do—vote my conscience. I, and a handful of Republicans, voted to enlarge the Rules Committee and the rules were changed.

Thomas More showed us all that there is no accomplishment, no success, no achievement without undying belief and inner strength.

During an outstanding career which included positions as Henry VIII's Lord Chancellor and Speaker of the House of Commons, Thomas More maintained a spiritual devotion above all else.

That devotion guided him in his decision to turn from his king rather than compromise what he believed was just. Faced with a choice between allegiance to his king or his God, the choice was clear.

Thomas More's final words on the scaffold July 6, 1535 were "the king's good servant, but God's first."

I have to say that in spite of all the stories we know about Thomas More's spiritual integrity, what sticks in my mind is one almost insignificant little tale. As a young man, Thomas More fell in love with a beautiful woman. The problem was that she had an older sister who had not yet married and, as was the custom of the time, it was an embarrassment for the older sister not to marry first.

Because Thomas More didn't want to embarrass the older sister, he steered his affections toward her instead and later took her as his wife.

This act didn't change history and, isn't the stuff legends are made of, but it demonstrates what was in this man's heart. He was a kind man—always thinking about how his actions would affect the lives of others.

When I came to Boston College from the South Pacific, where I was stationed during World War II, I thought I had seen it all. But my years at BC and Boston College Law School taught me different.

During my years here, I learned about justice, teamwork, enterprise and gained the all-important ability to believe in myself. I learned how to seek good in bad situations, and how to find strength when I felt weakness.

I owe a special debt not only to the school but to three wonderful men who guided me along while I was here. And believe me, they had their work cut out for them.

Father Stephen Mulcahey, Dean of the College at the time, gave me my first big chance. He really took a gamble accepting me from a vocational school with experience as a machinist and a tour of military duty under my belt.

But during my years here he became a confident, friend and advisor to whom I turned in many times of indecision.

And there was Father JFX Murphy. Without his help, I just couldn't have made it.

One of the preconditions of my acceptance at Boston College, you see, was that I take four months of tutorial studies.

Father Murphy and I burned a lot of midnight oil over the Latin texts those four months but those long hours we toiled in St. Mary's Hall went far beyond Classics. The lessons he taught lasted a lifetime.

And I'll never forget the chance Father William J. Kennely gave me during my first year at the law school.

I had injured myself playing football and the class work and jobs just never seemed to end.

Those classes at 18 Tremont Street—with no air conditioning, sirens screaming, James Michael Curly yelling at the top of his lungs from the streets outside—seemed to go on forever.

Well, I ended up with a "D" in Professor O'Reilly's Future Interests course and Father Kennely took me aside one day.

"Silvio," he said, "I think you ought to consider another law school."

I looked him in the eye and told him that if I couldn't graduate from Boston College Law School, I didn't want to go on to any other.

I had been living in a ratty, roach-infested old boarding house for $5 a week down at 7 Bullfinch Place behind the Old Howard and hitchhiking home to Pittsfield on weekends to be with my wife Corinne and two children.

I had tended bar in Pittsfield on weekends, sold Christmas cards, and painted houses just to scrape by. I had forgotten what sleep was.

The work load, the responsibility and the pressure—everything—came to a head that afternoon in Father Kennely's office and I knew, then, that if he would just give me one more chance I could achieve anything.

I told him that if he let me stay I would make the school proud of me one day.

Father Kennely must have believed me because he gave me that second chance. I ended up graduating in the top third of my class and, as you have shown me today, I made good on my pledge.

Father Kennely and I became such good friends I even sold him on the idea of adopting a Boston College Law School class ring and ended up designing the shank for the ring, myself.

Boston College Law School educated me in matters of jurisprudence, but more important, it taught me to be a good, strong person.

As I stand here today, I can't help but think of Thomas More in his Tower of London cell 452 years ago looking out the window as spring breathed new life into the countryside.

Sir Thomas More was just a man that sunny May afternoon four-and-a-half centuries ago when he made the decision to die for what he knew was right.

He was just a man when he denied his King, he was just a man when the axeman spilled his blood, but he is a noble spirit today—a martyr to the Catholic Church and our Christian God—a rare example of belief in a greater good.

I have tried to be an example of what is good in government and what is good in the American legal system.

Decisions have not always been easy and I'd be lying if I said I wouldn't like to make some over again.

But what I can say in all truthfulness, is that I believed in what I was doing then as I believe in what I am doing today.

As the lone Republican in the Massachusetts delegation, I think you all understand the unique pressures I face on a daily basis as a party leader.

Boston College Law School helped me find strength within myself and helped define my belief in a greater good. And for that I will always be grateful.

Thomas More once wrote, "Only God beholdeth the heart." That may be true, but I'll tell you, Boston College Law School will always hold a special part of mine.

Honoring me here today in the name of a man made saint by my Church—a spirit that has transcended time as a symbol of glorious devotion and inner good—is a gesture I will treasure until the day I, too, pass to God's grace.

It is with humble, sincere thanks and great honor that I accept this award today. I owe a great debt to this institution and feel so very proud that you feel I have served your heritage well.

Your gesture is one I shall never forget.

Thank you all—from the bottom of my heart.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

RECESS UNTIL 2 P.M.

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 10:45 having arrived, the Senate will now stand in recess until 2 p.m.

Thereupon, at 10:45 a.m., the Senate recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. WALLOP].

□ 1400

PHARMACEUTICAL EXPORT AMENDMENTS OF 1986

The PRESIDING OFFICER. Under the previous order, the hour of 2 p.m. having arrived, the Senate will now resume consideration of S. 1848, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1848) to amend the Federal Food, Drug, and Cosmetic Act to establish conditions for the export of drugs.

The Senate resumed consideration of the bill.

Pending:

(1) Metzenbaum Amendment No. 1948, to amend section 412, of the Federal Food, Drug, and Cosmetic Act, relating to requirements for infant formulas.

(2) Metzenbaum Amendment No. 1949, to require the Secretary to enter into agreements to obtain information about the export of drugs.

(2) Metzenbaum Amendment No. 1950, to require that the same conditions apply to the export of antibiotic drugs as apply to other drugs.

AMENDMENT NO. 1948

Mr. METZENBAUM. Mr. President, I have an amendment pending at the desk, and that amendment has absolutely nothing to do with the U.S. export of unapproved drugs. But this is an issue which, for too long, has badly needed the attention of the Senate—the safety and the purity and effectiveness of the baby formula consumed by this Nation's infants.

The amendment I have offered, I am pleased to say, is cosponsored by Senator GORE and Senator SARBANES. Senator GORE, it will be recalled, was a leader in the House when that body first passed legislation in connection with the whole issue of infant formula.

The amendment now pending before us strengthens the Infant Formula Act of 1980, a law which was supposed to ensure that defective and, indeed, life-threatening infant formula would never again reach the grocery shelves.

Many Members of this body will recall that the Infant Formula Act was a bipartisan congressional response to a tragic incident, which jolted us into the awareness that we were not doing everything that we could to protect the lives and health of newborn babies.

It is with great disappointment, therefore, that I stand here today and say that the Infant Formula Act of 1980 is crippled—crippled, Mr. President, by weak regulations which allow baby formula to leave the factory without adequate testing for the safety and wholesomeness of the product. How can anybody justify that kind of situation? These regulations, Mr. President, leave this country's children vulnerable to the same type of tragedy that was experienced in 1979.

In 1979, the Syntex Corp., at that time a major manufacturer of baby formula, produced and sold a formula which subjected infants to what was later described as "a unique form of malnutrition."

There were 20,000 babies exposed to this defective formula. Some died. Some will suffer the formula's harmful effects for the rest of their lives.

So we responded with the Infant Formula Act.

What a wonderful day it was when we were at the White House and the little children were there with us. I am sorry to say that some of those little children were the very ones that had been adversely affected by the use of those infant formulas. But the fact is that they were there.

President Carter, I recall, took one child on his lap and said, "Here's the red phone. You can call Mr. Brezhnev."

It was a day of excitement, because we knew we were doing something right.

During the last days of the Carter administration, FDA wrote regulations to accompany this new law. The regulations were carefully crafted and quite detailed.

Problem solved—case closed, right? Wrong. Wrong, I am sorry to say, because those regulations were never put into effect. A new draft was produced. When those regulations were unveiled, it was quite apparent that the effectiveness of the Infant Formula Act had been gutted—totally reversed in its impact.

Let me quote from an internal memo by an FDA attorney which was uncovered by congressional investigators:

The FDA official called the rewritten regulations "hardly recognizable" and he stated that if a court challenge of the regs were made, "the agency [FDA] would probably lose." Those are his words, not mine.

The FDA lawyer went on to add that the new regulation "incorporates most changes desired by the industry * * * It seems very unlikely that any industry group will complain about the current draft * * *." And he was right.

That is not all. He continued:

Substituting general standards for specific rules has so altered the proposed regulation that the two drafts cannot be meaningfully compared section by section.

So now the new FDA had new regulations that met a curious criterion: Industry groups would not complain.

FDA's redrafted regulations said:

Each manufacturer may establish a (quality control) system that best suits its own needs.

Can you believe it? Can you believe that each manufacturer was to be permitted to establish its own quality control system that best suits the needs of the child? Oh, no. That best suits its needs.

But what about meeting the needs of infants? FDA Commissioner Arthur Hull Hayes, Jr., dismissed those concerns by saying:

We do not believe that the slight additional public health benefit that may be gained by adopting a very detailed rule can ge justified in view of the significant additional costs of such a rule.

I would say to Arthur Hayes, who is no longer at the FDA: "Mr. Hayes, I don't know if you have any grandchildren; but if you had grandchildren, you would be concerned about what the little babies are ingesting, and you would not be so ready to talk about the slight additional public health benefit that may be gained by adopting a very detailed rule if it were your grandchild who was involved and possibly put in danger of its life or the kind of future life it might have, assuming that it lives."

There you have it. The FDA Commissioner came up with some half-baked cost/benefit analysis and the babies lost out to the lobbyists. That is all this amendment is about.

Where does all this leave us today in terms of the safety of baby formula? In spite of a law which could have kept even a single defective can of formula from reaching consumers, well over 3 million cans of dangerous formula have had to be recalled. Why? Because inadequate testing allowed bad formula to leave the manufacturing facility and end up in our homes.

Do you hear that? Three million cans of dangerous formula have had to be recalled.

The amendment offered by Senator SARBANES, Senator GORE, and myself simply sets up the kind of quality control system that we voted for in 1980. It plugs the holes in the current regulations and will make parents secure in the knowledge that the formula they give their babies has been tested and is safe.

This amendment is quite similar to a bill which I introduced on January 24, 1985.

The provisions of the amendment are as follows. I want to repeat that this amendment, in all candor, is not directly in point with respect to the drug export bill. But we needed an opportunity to present this issue on the floor of the U.S. Senate, and it has nothing to do, actually, with the drug export issue. However, it is important enough and it is related enough, when we are talking about health concerns of children, that it belongs in this bill. But it is not directly in point with respect to the drug export bill.

What does the amendment provide? It provides:

First, each batch of infant formula must be tested for each essential nutrient before distribution to make certain the formula is free of harmful or unsafe substances.

Second, infant formula samples would be periodically tested throughout the formula's shelf life.

Third, each manufacturer must retain the records pertaining to the production of infant formula for 1 year after the expiration date, so that FDA investigators can act quickly in the event of an accident.

Fourth, each manufacturer must maintain a file of complaints concern-

ing their products and make that file available to the FDA.

Fifth, new infant formulas would not be introduced on the market unless an application has been submitted to FDA and approved by the Secretary of Health and Human Services.

That is the guts of the amendment. You could not introduce a new infant formula on the market unless you made an application to the FDA and it has been approved by the Secretary of Health and Human Services.

Sixth, FDA would be given a stronger role in a recall of a defective formula because, even though it had been tested, it is very possible it could go into the marketplace and be found to be defective. Today, FDA must convince the manufacturer to voluntarily recall the product.

The children are ill. They are suffering. They are getting sick. Some may be dying. And under today's regulations the FDA must go to the manufacture and say, "Please, Mr. Manufacturer, won't you voluntarily recall the product," because FDA has no authority to recall an infant formula no matter how dangerous.

Last, in the event of a recall, a notice would have to be posted at the point of sale in order to better warn parents.

Mr. President, that is the totality of the amendment. It simply requires manufacturers to test the infant formula they produce before they ship it for distribution. That is not much to ask, considering what we are risking today.

I wish to point out to my colleagues that the provisions of this amendment are much less detailed than the FDA's original proposal. But if adopted, at least we would know that every batch of formula has been checked for nutritional content and is free of contaminants.

Each Member of the Senate yesterday received a letter from a group called Formula.

The founders of this group, Lynn Pilot and Carol Laskin, know about the dangers of unsafe baby formula through their own tragic personal experience—their two boys were harmed by a defective formula.

They stated in that letter:

> We believe these amendments will provide protection for our nation's most precious resource—our children.

And they say:

> On behalf of all parents, we strongly urge you to support these infant formula amendments.

Let me demonstrate exactly the kind of risks we are taking, Mr. President. In January and February of 1982, Wyeth Laboratories produced an infant formula that contained absolutely no vitiamin B-6. A mistake was made in the mixture of the formula, but the company's quality control system did not catch it.

According to the FDA:

> Wyeth failed to exercise reasonable supervision to ensure proper handling of raw materials * * * Wyeth allowed poor raw material handling practices to develop and continue without adequate controls thereby creating an environment conducive to errors * * *.

That is the language of the FDA.

So 4 million bottles of baby formula were produced without vitamin B-6—a situation that threatened to cause serious health consequences or death.

FDA said.

> The total absence of vitamin B-6 in the diet of an infant for more than a few weeks may cause convulsions and, in more serious instances, brain damage. A vitamin B-6 deficiency represents a severe hazard to infants who receive formula as a sole source nutrition.

By accident, Wyeth discovered the B-6 problem but not before 2½ million bottles were distributed nationwide. According to FDA investigators, if Wyeth had not made this fortuitous discovery, its infant formula products could have had catastrophic consequences.

Mr. President, Wyeth has not been the only manufacturer to produce defective formula since 1980. Companies like Mead Johnson, Abbott Ross, and Gerber have also failed to catch harmful baby formula before it hit the stores.

Yesterday, I read part of the letter from the formula group that I just mentioned a few moments ago, and I listed about 12 separate instances where defective formula had been put into the marketplace by a large number of companies, and I am sure the CONGRESSIONAL RECORD will speak for itself as to each of the instances and the amount of defective formula that has been put into the marketplace.

Mr. President, we worry so much today about tampering of consumer products, and yet we are not doing everything we can to make sure that baby formula is wholesome when it leaves the plant. That is absurd.

In a 1983 incident, another manufacturer of infant formula had private laboratory results confirming that its product was defective. Listen to this. But the company went ahead and authorized the sale of the formula anyway.

And despite the fact that FDA had information that the formula was defective on August 5, 1983, the recall did not get started for over 2 months! Why? Because FDA recall regulations are completely inadequate.

Mr. President, I am certainly not the only one concerned with the current situation. At a conference on infant formula last year, an FDA official noted that a total of five infant formulas had to be recalled in the preceding year, and explained that "poor quality control resulted in the marketing of a hazardous infant formula."

He went on to say that FDA is worried because "some quality control plans seemed to be poorly organized in an overall sense. This, of course, makes it more difficult for us to make accurate assessments of the job that manufacturers are doing to assure that nutrient requirements are being met."

That statement alone ought to be enough to convince us that we are walking a tightrope with respect to the lives and health of America's infants. The fact that we allow baby formula manufacturers to get away with sloppy safety procedures is absolutely unacceptable.

If we do not do something more to strengthen the regulations of the Infant Formula Act, we will see another infant formula disaster. It is as simple as that.

Why should we wait for another disaster before we are compelled to act? Too often, Mr. President, we find ourselves reacting to a tragedy, rather than acting to prevent a tragedy.

Mr. President, there is simply no margin for error in the production of baby formula. An infant relies on the formula to sustain life and provide the proper nourishment at a time of rapid physical and mental development.

It is time to end FDA's policy of "let the baby beware" and instead to institute the safeguards our children deserve.

I want to repeat to my colleagues that this amendment is not directly in point with respect to the drug export bill. But I believe it to be so urgent and so much a matter of an emergency that I deemed it appropriate to offer it on this bill.

I say to my colleagues in the Senate that if you have any children, or if you have grandchildren, and if you are concerned about their health, if you are concerned about what is going in their little bodies, then I cannot see any reason that anybody can justify voting against this bill.

I would hope, frankly, that my colleague who is managing the bill, from the State of Utah, Senator HATCH, would see fit to accept this amendment. This amendment is right. To vote against this amendment is to vote against the infants born today and tomorrow and in our future. Please do not let them down.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

□ 1420

Mr. METZENBAUM. Mr. President, I wish to say to my colleague from Utah, just as soon as he has concluded his remarks I am prepared to vote.

Mr. HATCH. Mr. President, as I indicated in my remarks yesterday, the first problem I have with this amendment is that it has nothing to do with pharmaceutical export amendments of 1986. It relates to an entirely different subject area, that of infant formula, and would require the Members of this body make judgments on matters for which they cannot have been well briefed. It seems to me that we have our hands full with the 20 or more amendments by the Senator from Ohio which do relate to the subject matter of the bill, without trying to shift our attention to another portion of the Food, Drug and Cosmetic Act.

More importantly, this amendment is the subject of legislation, S. 265, which has not been heard in committee and has not received a vote by committee members. As chairman of that committee, I object to its being considered as an amendment on this bill. This is not merely a matter of form. As my comments will being out, the issues raised by this piece of legislation are complex and important, and involve scientific evidence and judgment on that evidence which should not be made in the first instance on the floor of the Senate looking at final passage.

For reasons which I will spell out, the Food and Drug Administration will not support this proposal.

There is no reason to change current law. FDA feels the Infant Formula Act of 1980 is working well and has been no evidence that supports change.

Since the passage of the Infant Formula Act of 1980, there have been no known cases of infants in the United States who have been adversely affected by nutrient deficiencies in infant formula. Unlike the preenactment era, problems that have occurred have been resolved quickly with no harm.

Since 1980, there have been eight infant formula recalls. Three involved established manufacturers of infant formulas. The first of these, which occurred before the quality majority of cans of infant formula that have been recalled since the passage of the Infant Formula Act of 1980. This recall involved a quality control failure that presumably would have been detected and corrected under the testing requirements in the current regulations. The second recall involved a reduction in shelf-life potency that was detected and dealt with by the manufacturer before the nutrient levels fell below the minimum levels allowed by the Infant Formula Act. The third involved a deficiency in a permix that had been certified as being free from any defects by the premix supplier. The deficiency was caught quickly enough to prevent undue exposure to any infant.

The remaining five recalls involved aspiring manufacturers of infant formula or foreign manufacturers whose products recently appeared in U.S. territory in the Virgin Islands without prior notification to FDA. The aspiring manufacturers generally disregarded the requirements of the Infant Formula Act and presumably these recalls would have been necessary under the Senator's amendment as well as under current law. The foreign products may have reached U.S. territory from another island in the area without the knowledge of the manufacturer.

In addition, to these product recalls, there has also been an unusual recall of literature involving a Japanese soy-based product that was not labeled as being an infant formula. Literature associated with the product suggested that it could be useful as an infant formula for infants who had feeding problems with milk. A child in Canada reportedly developed rickets and other nutritional deficiency problems as a consequence of these representations: FDA was able to obtain a recall of the literature. But again, it is doubtful this kind of occurrence could be prevented by new legislation.

In summary, the Federal regulation of infant formula appears to be working. FDA has not been able to identify any systemic problems in the existing regulatory framework that would require the substantial modifications proposed by the Senator's amendment.

PREMARKET APPROVAL

The current system under the Infant Formula Act is one of notification by manufacturers to FDA. This amendment would replace that system with a premarket approval requirement. Make no mistake—this is a major legislative change. This premarket approval system is much more time consuming and burdensome and consumes much more agency and industry resources. FDA does not feel that it would be able to live up to the time lines set forth in the amendment, and based on its record in the new drug area I would have to agree.

More importantly, we recognized the potential impact of such a system when we specifically rejected the Federal pre-clearance of infant formula, in favor of the current notification requirement, during our consideration of the Infant Formula Act of 1980. The Labor and Human Resources Committee report on that act concluded that:

> The notification requirement . . . will go far to assure consumers a reasonable standard of safety while not unreasonably burdening the industry through a potentially cumbersome system of marketing clearances.

We are now asked to take the step that we rejected then. To justify such a change, there should be some compelling reason, but FDA has stated:

> Our experience so far, however, has not revealed any deficiencies in the existing notification system that would require a premarket approval system to correct.

Let me just take a few minutes to talk about the requirement of testing every batch in its finished form for every nutrient. FDA's current testing regulations are grounded in reason and common sense. They recognize that there is no virtue in testing for testing's sake. They require that each batch of infant formula be analyed for all but 6 of the 29 statutorily required nutrients, either at the raw material stage, the in-process stage, or the finished product stage. The other 6 nutrients must be tested for only at 3-month intervals.

However, there have been no documented cases—ever—of deficiencies in normal infants of biotin, choline, and inositol, three of the nutrients. And vitamins D, and K, two of the others, are well-retained in the human body. Finally, the vegetable oils now used as fat sources are rich in linoleic acid, the final nutrient. This, combined with the lack of product deficiencies with these nutrients over the past few years, convinces FDA that current 3-month testing requirement for these nutrients is adequate. On the other side of the coin, analyses for these nutrients are unusually time consuming and expensive, and would increase the price of the infant formula, and that would be very, very tragic for millions of low-income people all over the world, especially since there is no reason to put them through this and there is no reason to have this type of added expense.

Further, testing the formula at the finished product stage would require the manufacturer to warehouse the entire product batch during testing at considerable expense, since some of these tests take months, and that expense would inevitably be passed on to the consumer.

QUALITY FACTORS

The amendment would require the Secretary to issue regulations establishing quality factors for all the required nutrients. This amounts to a mandatory setting of standards for bioavailability. Bioavailability of nutrients in infants is a far different and more variable matter from bioavailability in new drugs, for example. The scientific community has never accepted standards for bioavailability of these nutrients, with the sole exception of protein. And FDA has issued a quality factor for protein. In short, the Infant Formula Act of 1980 gives the Secretary discretion to establish quality factors, and the Food and Drug Administration has remained sensitive to that authority, using it when it became appropriate. But there is no sense in forcing the Government to set standards which are still matters of scientific uncertainty. The important thing is that it is known that some forms of nutrients are more bioavailable than others, and that all infant formula

manufacturers are using the most bioavailable forms available. Thus I don't see what improvement the adoption of this amendment would bring for our children.

What we do not need at this time is new legislation that has not been tested by the committee process for products that literally have been covered by legislation passed just 5 years ago, legislation that is working very, very well, legislation that is protecting infants all over the world, and legislation which protects them at the most reasonable cost.

Now, the Senator, of course, feels very deeply about these type of amendments and I think he does feel deeply about labeling and many things that he argues about. Sometimes he is right. In this particular case, he is not right. We should not have to amend the 1980 act at this time on this bill when there have not been hearings and there is no evidence that it needs to be amended, other than the Senator's feelings.

To be frank with you, this is not the thing to do on this particular bill. So, with that, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Wait just a second. Let me withdraw that.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The motion to table is not debatable.

Mr. METZENBAUM. Mr. President, I understand that. But I am going to ask my colleague to not go forward with the motion to table. He has just spoken and I want to respond to his remarks.

Mr. HATCH. Of course. I withdraw my motion to table.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. METZENBAUM. Mr. President, the chairman of our committee, Senator HATCH, made the point that there have been no hearings and because there have been no hearings it is inappropriate that we go forward with an amendment of this kind. But let me point out to my chairman that on July 20, 1983, I, Senator KENNEDY, Senator JENNINGS RANDOLPH, Senator CLAIBORNE PELL, Senator DONALD RIEGLE, Senator SPARK MATSUNAGA, and Senator CHRISTOPHER DODD wrote to him asking for hearings. At that time, we said:

> As members of the Labor and Human Resources Committee, we urge you to convene oversight hearings on these regulations as a matter of urgency.

That was in July of 1983.

If that were not enough, in August of 1983, I wrote again to the chairman of the committee in which I said:

> I would like to inform you that there is yet another recall of adulterated infant formula underway of vitamin-deficient Soyalac powder, milk-free fortified formula for infants.

I went on to say:

> This incident makes my recent request for congressional hearings on all the regulations established under the infant formula bill even more urgent.

That was in July of 1983 and one in August of 1983. Two years passed and we still did not get a hearing. On April 19, 1985, I addressed a letter to the Honorable ORRIN HATCH, chairman of the Committee on Labor and Human Resources, and the Honorable PAULA HAWKINS, chairman of the Subcommittee on Children, Family, Alcoholism, and Drug Abuse.

At that point I said:

> Last Sunday, the Food and Drug Administration announced that an infant formula known as "Kama-mil" was being called off the market. FDA, which only became aware of the existence of this formula through an anonymous source, found that "Kama-mil" was marketed without proper notification and that it contained life threatening nutrient deficiencies.

My letter goes on to say:

> I am again requesting that a hearing be scheduled on the current infant formula regulations and on my proposed amendments as soon as possible. More immediately, I urge you to schedule a hearing—either at full Committee or before the Subcommittee on Children, Families, Alcoholism, and Drug Abuse—on the current recall situation, in order to explore the reasons FDA officials have been unable to act swiftly in this matter. As you may know, this is not the first recall of defective formula since passage of the Act. Prior to the current "Kama-mil" recall, three million cans of formula had to be seized.

Certainly we have been pressing the chairman for a hearing on this issue. Certainly he can make no argument that we have not requested a hearing. We not only requested a hearing, but we have gone back to him time and time again but to no avail. So I have no alternative but to offer this amendment to this pending piece of legislation.

Let me summarize in one sentence. If you are concerned about the babies of your children and grandchildren, and all the babies that are being born every day of the week in this country, then you cannot afford not to vote for my amendment.

I believe the issue is are you concerned about the health of children, or babies, or are you not? I believe the Members of this body are concerned and are not going to play twiddle-dee, twiddle-dum as to whether or not there was or was not a hearing. We sought a hearing. We could not get a hearing. We sought a hearing three separate times and could not get a hearing.

Think about the babies and quit worrying about the process. I think that is all the issue is about.

Having said that, let me say to my colleague from Utah, I have indicated a willingness to proceed forward promptly with respect to a number of amendments that I have offered today. I would hope that he would see fit not to offer motions to table, and that we might have an up or down vote. I do not intend to drag out the debate.

I am prepared to vote immediately.

Mr. HATCH. I say to my distinguished friend from Ohio I will have to move to table most of these amendments, however, at the request of a number of Senators.

Let us be honest about it. There has been basically no reason whatsoever to hold hearings on this issue because there have not been any problems or any injuries. In the Kama-mil case, the distinguished Senator from Ohio says Kama-mil was marketed in defiance of the 1980 law. That would have happened if the Senator's amendments were passed. If current law had been followed by the Kama-mil manufacturers, there would have been no problem. If this amendment had been law, it would have made no difference. It would not have protected any infants.

The fact of the matter is this amendment is another attempt by somebody who desires overregulation by the Fedeal Government.

That is why we saw no need for a hearing on this legislation. It would not have corrected the problem.

If the Senator can bring up good illustrations which the FDA agrees with—and they have investigated and are investigating every one of these things—of course we will hold hearings on it. But he has not been able to do that so far. The FDA has been opposed to this type of overregulatory conduct.

So again, this comes down to are we going to regulate people into the ground or are we not? Are we going to escalate the costs, or are we not? I think it is time to get to what this bill is all about and not bring up red herrings that really have no reason to be here on the floor of the Senate at this time.

The fact of the matter is I do not know of any case—other than a couple which as the Senator has explained the FDA is investigating—and neither does FDA know of any case where infants have suffered as a result of formulas except those where current law was ignored, and those eight infant formula recalls since 1980.

Mr. METZENBAUM. Mr. President, will the Senator yield? Do we have to wait until the children suffer?

Mr. HATCH. I think we have to have more than the Senator's visceral instincts before we start regulating, and adding to the cost of infant formula.

Mr. METZENBAUM. Is the Senator aware that Mead Johnson had two recalls of over 300,000 cans; that Wyeth Labs, Inc., had two recalls of over 3.3 millions cans; that Sunrise & Rainbow had a recall of 6,935 cans; that Loma Linda Foods had recalls of 272,768 cans; that Ross Labs had 5,184 cans recalled; that Gerber Products—the famous Gerber Co.—had 74,000 cans recalled?

Mr. HATCH. Each one of those examples are examples of how the current law works to protect infants. We have had eight recalls since 1980, and every one of those has been recalled pursuant to this law of 1980. Does the Senator want to add to the overregulatory infrastructure of that law?

Mr. METZENBAUM. These were on the market and being sold.

Mr. HATCH. I described each one of those eight recalls accurately.

Mr. METZENBAUM. Fortunately, no children suffered by reason of using those formulas.

Mr. HATCH. That is right. Not a one.

Mr. METZENBAUM. But the fact is they could have, and I am saying what we ought to do is have testing of the product before it goes into the marketplace.

I have difficulty in understanding my colleague and my friend as to why he would be opposed to that. I cannot believe that I am standing here debating the question of whether or not infant formula ought to be tested before it is sold in the marketplace.

I am prepared to vote.

Mr. KENNEDY. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. I am happy to yield to the distinguished Senator from Massachusetts.

Mr. KENNEDY. Mr. President, is the Senator reserving the right to move to table?

Mr. HATCH. Yes. I am reserving the right to make a motion to table.

Mr. KENNEDY. Mr. President, as Members know, I am a cosponsor of this legislation with my good friend from Utah. But I must say on this particular issue of the infant formula I have to part company with him. What has happened both here in the United States and around the world has been a subject matter which has been before the health committees of this body over a period of probably some 15 years.

Senator METZENBAUM makes a strong case of support for action going back to 1980, and a very clear indication that the membership of this body, and also over in the House, felt that there should be strong remedial action. That legislation was really never implemented in ways that it was intended I believe by the House and the Senate, particularly those that follow this issue with great interest.

Now we have some dozen different examples since 1981 where there have been problems. Those have been referred to in the earlier debate and discussion. The response is made, well, that really shows that the legislation is working since we have found these particular instances where there have been difficulties and there have been problems. I will submit the list of marketing of defective formulas despite the passage of infant formula law, and the various occasions or dates when the problem has been detected.

The purpose of this amendment is to avoid these kinds of instances. One can say the law is working because we have been able to detect it. The Metzenbaum amendment is to avoid these kinds of occasions in the future. It is his best judgment, and one with which I agree, that the proposal and the regulation would address certainly the kinds of problems that have been outlined and have been identified since 1981.

I know the point is made that it is effectively overkill because there will be testing of various nutrients in these various programs. But I believe that is an essential aspect of the protection for the consumer, and particularly the most vulnerable consumer in our society; that is, the infant. Therefore, in this instance we certainly want to err in terms of protection of those individuals.

So this amendment has merit. I think we are talking about providing important protection for individuals who are really the most vulnerable. Many of us are aware of a number of industries in the profession that are using the kinds of standards which are basically included in the Metzenbaum amendment to ensure that their products are not going to be subject to any type of abuse.

□ 1440

Mr. President, I hope that this amendment is not tabled and that it will be accepted. It strengthens the entire legislation.

I thank the Senator from Utah.

Mr. HATCH. Mr. President, I will reiterate that since 1980, and I appreciate the feelings of my colleagues about this, there have been eight infant formula recalls. Three involved the manufacturers of infant formula. The Senator from Ohio has listed them.

As I say, the first of those occurred before the FDA issued its quality control regulations, which accounts for the overwhelming number of cans of infant formula that were recalled since the passage of the Infant Formula Act of 1980. That recall involved a quality control failure that would have been detected and corrected under current testing and regulatory requirements in the current regulation. There is no question about that.

The second recall involved the reduction of shelf life potency. That was detected by the manufacturer, itself, and it was detected before the nutrient levels fell below those allowed by the Infant Formula Act.

So the infants were protected and would have been protected under that act itself.

The third involved a deficiency in a premix. That premix had been certified as being free from any defects by the premix supplier. The premix difficulty was caught quickly enough to prevent any undue exposure to any infant and caught under the law of 1980.

The remaining five involved new, domestic manufacturers or foreign manufacturers whose products recently appeared in our U.S. territory in the Virgin Islands without prior notification of the FDA. These manufacturers disregarded the requirements of the Infant Formula Act.

Those recalls would have been necessary under current law, but they also would have been necessary under the Senator's amendment.

Foreign products may have reached U.S. territory from some other island in the area without the knowledge of the manufacturer. There was an unusual recall involving Japanese soy-based product. It was not labeled as being an infant formula. The literature said that it could be used as an infant formula as a substitute for milk products if infants were having feeding problems with milk.

A child did develop rickets under the nutrient deficiency problems, but FDA was able to recall the literature under existing law. Again, it is doubtful if that kind of occurrence could have been prevented by the new legislation, certainly by the amendment of the distinguished Senator from Ohio.

So this amendment would not add anything to any of these instances which are the only instance which, to the knowledge of FDA, have occurred. FDA does not feel that it needs this added regulatory burden that the distinguished Senator from Ohio, and I take it the distinguished Senator from Massachusetts, would like to have. The FDA has not been able to identify any real systemic problems in the existing regulatory framework that would require the substantial modifications that the Senator is asking for in his amendment today.

We could ask for more and more regulations on anything. But the question we need to ask ourselves is how necessary the additional regulations would be. I agree, if the system is not working, if it has not been working well, if there are indications that it is not working well, we need to correct the situation. But to add another regula-

tory burden which the FDA says it does not need at this time does not contribute anything.

Mr. METZENBAUM. Mr. President, I am prepared to vote. Is there some reason that the Senator is not prepared to vote at this point?

Mr. HATCH. I understand there are a number of Senators at the White House right now. The Secretary of the Senate has asked me to wait a few more minutes.

Mr. METZENBAUM. I have no objection to doing that, but I want to say to my colleague I tried to be cooperative. I did not bring up any amendments this morning, as I wanted to do. I have tried to move this matter forward promptly. I have a number of additional amendments that I want to bring up. I do not want to be crowded for time on the basis that somebody wants to get away.

Mr. HATCH. I share the viewpoint of the Senator from Ohio. He has been very cooperative. We do want to accommodate him on these amendments. Can we temporarily set it aside and wait for Senators to return from the White House and move to the next amendment? Why not go to the second amendment?

Mr. METZENBAUM. Does my colleague think if we start the rollcall they might not be back before we finish?

Mr. HATCH. I would prefer not to start the rollcall. Why not temporarily lay this one aside?

Mr. METZENBAUM. The Senator from Tennessee has just entered the Chamber. He has been involved in this very actively. I yield to him.

Mr. GORE. Mr. President, I appreciate this time to speak on the Metzenbaum amendment. I want to express my strong and unequivocal support for this amendment. As the principal sponsor of the Infant Formula Act in the other body during the last Congress, I spent many hours looking at the nature of this problem we are trying to remedy.

Along with the Senator from Ohio, Senator METZENBAUM, I took some pride in the bill itself and had some hope that its provisions would protect some of our most vulnerable citizens against a problem that had arisen far too many times in the past. That is, poor quality infant formula being made available on a mass distribution basis and then severely hurting the health of thousands and thousands of infants throughout the country.

We passed this legislation and expected that the administration would implement it in good faith. Unfortunately, those hopes were not justified because after the law went into effect, the administration, for a long time, refused to implement the law.

A long time after it passed, about a year, it had still not been implemented, and another incident took place of thousands of cans of defective infant formula distributed widely throughout the country. In this particular instance, the defect involved was one identical to a defect which had occurred some 20 years earlier affecting the same company.

As a result of that earlier episode, there are many, many young people in their 20's in this country who have severe problems in speaking, in moving, severe brain damage. We know the results of the particular deficiency that was involved.

The Commissioner of the Food and Drug Administration at that time came before the Congress and testified under oath that if the Infant Formula Act had been implemented, then this incident would never have occurred. The law would have prevented it from taking place and those infants would have been protected.

Well, the day after the hearing at which that testimony took place, the FDA finally signed off on regulations implementing the law. Some people again breathed a sigh of relief. But once again, Mr. President, hopes invested in those regulations did not proved to be justified because upon closer examination it became apparent that the regulations promulgated changed the intent and thrust of the law very significantly, and deprived the law of its intended impact. It made it very difficult for those enforcing the law to really accomplish the purposes of the act, namely, to protect infants consuming formula in this country.

□ 1450

So what does the Congress do? It is a classic problem. If the Congress passes a law and the administration charged with faithfully executing that law refuses to implement it and then belatedly implements it in a fashion which frustrates the intent of Congress and removes from the law its real effectiveness, what remedy is there?

Where, there is only one effective remedy, and that is for the Congress to come back, amend the law, and make it work the way it was originally intended to work.

There are some problems with that because ideally in our system the legislative branch and executive branch should work in partnership, each bringing its own unique strengths to that partnership and allowing our laws to work not only with effectiveness but with sensible flexibility as well.

Where the administration failed in the discharge of its duties, the Congress must be more specific in spelling out exactly what needs to be done. The amendment offered by the Senator from Ohio accomplishes this purpose. It would fix the law and make sure that it serves the purposes it was originally intended to serve. This amendment would require manufacturers to test formula for each required nutrient prior to distribution.

What is wrong with that? In the wake of this record which has been built up over the years and in the wake of the administration's failure to administrator a more flexible version of this, this is essential.

The amendment would require periodic testing of formula throughout the shelflife of the product. What is wrong with that? It should be done. Mothers and fathers of infants relying on formula want this action to be taken.

The amendment would also require manufacturers to retain production records for 1 year after the expiration date in order to aid FDA investigators in the event of an accident.

Again, Mr. President, what is wrong with that? If we have a massive defect involving a mass-produced product affecting the health and lives and safety of infants throughout this country, why not allow the food and drug investigators to have a good chance to fix it?

It would require the manufacturers to maintain a file of complaints regarding their product and make that product available to the FDA.

What is wrong with that? That is something that obviously should be done, and under this amendment the FDA would have an enhanced recall authority. We know from experience that it needs that enhanced recall authority, and new formulas would require approval, as they should require approval.

So, Mr. President, I urge my colleagues on both sides of the aisle to support this amendment strongly. It is unfortunate that the original law was implemented in a fashion which really did not reflect a good faith discharge of the duties of the executive branch, in my opinion, but regardless of what you think was the cause of the current deficiencies in the law that is on the books, you should support this amendment which would remedy those deficiencies and make the law work as it was originally intended to work. So I urge all my colleagues to vote aye on the Metzenbaum amendment.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the names of Senators KENNEDY and MATSUNAGA be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I yield the floor to the Senator from Hawaii, one of the cosponsors.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. MATSUNAGA. Mr. President, as a cosponsor of the original law which the FDA has failed to implement and as a cosponsor of the Metz-

enbaum amendment now being considered, I rise in strong support of the amendment. What is wrong with the amendment which merely, one, requires manufacturers to test each batch of infant formula for a level of required nutrients and also to ensure that the formula does not contain any hazardous extraneous materials before the formula leaves the factory?

Two. The amendment provides for routine testing of nutrient levels during the formula's shelf life.

Three. The amendment requires all testing records for liquid and dry infant formulas to be retained for 1 year after expiration of the formula's shelf life.

And, four, the amendment establishes recall procedures for any formula which does not meet nutrient requirements or is otherwise adulterated.

Now, what is wrong with this amendment? No one can speak against the full provisions of it, and so I strongly urge my colleagues to support the amendment now pending.

Mr. METZENBAUM. Mr. President, I thank the Senator from Tennessee as well as the Senator from Hawaii for their supportive remarks. I have indicated previously that I am prepared to vote. Is the Senator from Utah prepared at this point? If not, I will offer to move this amendment aside. Is the Senator prepared to vote?

Mr. HATCH. I believe, with our colleagues still at the White House, we should temporarily set this aside and move to the next amendment. The minute we get notice that they have left the White House, we will be happy to move to table.

AMENDMENT NO. 1950

(Purpose: To require that the same conditions apply to the export of antibiotic drugs as apply to other drugs)

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM Mr. President, I have three amendments pending at the desk. I ask unanimous consent that the first and second amendments be set aside and the third amendment be called up for immediate consideration.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 1950.

Mr. METZENBAUM Mr. President, I ask unanimous consent that further reading of the amendment be disposed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 37, between lines 20 and 21, insert the following:

"(9) An antibiotic drug which is subject to certification by the Secretary under section 507 may be shipped for export only to a country described in paragraph (2) and only if the antibiotic drug meets the requirements of paragraph (3).

SEC. 4. (a)(1) The provisions of section 801(e) of the Federal Food Drug, and Cosmetic Act, as added by section 3 of this Act, shall not apply, for a period of one year beginning on the date of enactment of this Act, to any antibiotic drug which—

(A) is subject to certification by the Secretary of Health and Human Services under section 507 of the Federal Food, Drug, and Cosmetic Act;

(B) has been exported prior to the date of enactment of this Act;

(C) does not comply with the provisions of section 801(e) of the Federal Food, Drug, and Cosmetic Act, as added by section 3 of this Act; and

(D) complies with the provisions of paragraph (2).

(2) An antibiotic drug to which paragraph (1) applies may be exported if—

(A) such antibiotic drug has not been the subject of final action by the Secretary of Health and Human Services denying, withdrawing, or suspending approval or certification of such antibiotic drug on the basis of safety and effectiveness, or otherwise banning such antibiotic drug on such basis; and

(B) such antibiotic drug is not the subject of a notice by the Secretary of Health and Human Services of a determination that the sale of such antibiotic drug in the foreign country to which such antibiotic drug is to be exported is contrary to the public health and safety of such country.

(b) The Secretary of Health and Human Services may extend the one-year period for which, pursuant to subsection (a)(1), the provisions of section 801(e) of the Federal Food, Drug, and Cosmetic Act do not apply to an antibiotic drug if the Secretary determines that the manufacturer of such antibiotic drug is making a good faith effort to comply with the provisions of section 801(e) of the Federal Food, Drug, and Cosmetic Act, as added by section 3 of this Act, with respect to such antibiotic drug. Any extension under this subsection shall be for a period not in excess of one year.

Mr. METZENBAUM. Mr. President, the amendment which I have sent to the desk would include antibiotics under the provisions of this legislation. Now, currently antibiotics which have not completed the FDA approval process can be exported. This amendment would simply bring antibiotics under the protections which the sponsors of this legislation contend the present bill contains.

Mr. President, there is absolutely no reason to treat antibiotics any differently in this legislation than we treat nonantibiotic drugs. After all, we require both kinds of drugs to go through elaborate and extensive testing prior to approval in this country to determine their safety and effectiveness.

As I have said, the sponsors of the legislation before the Senate contend that the bill provides foreign consumers with protection. Why should not that protection about which they speak be offered to foreign consumers who now use unapproved antibiotic drugs?

Mr. President, there is certainly a need for protection in this area. Listen to the response of the FDA when asked how many staff are assigned to monitoring the export of unapproved antibiotics to ensure that they at least meet our code for good manufacturing practices.

Let me quote from that response:

No resources are assigned specifically to determine whether unapproved antibiotics that are exported are in conformity with the current requirements of the good manufacturing practices or to determine if a particular firm may be engaged in exporting unapproved antibiotics.

Mr. President, the FDA cannot tell us which unapproved antibiotics are being exported, which drug companies are exporting, or even whether these products meet the most basic of FDA standards—those involved in the proper manufacture of the product. We are not even discussing whether these antibiotics are safe or whether they are effective. The only current requirement is that they are manufactured according to basic standards. And the FDA has no way of knowing if this is the case.

Mr. President, the Senate is not in order, including the Presiding Officer. May I have order in the Senate, please?

The PRESIDING OFFICER. The Senate is in order.

Mr. METZENBAUM. Mr. President, although there is a dearth of information on which companies are actually exporting the unapproved antibiotics, I have been able to document one case which should give the Senate ample cause for alarm. I refer to a Bristol-Myers product with the export brand name "Uropol." It is a combination antibiotic with tetracycline, a phosphate complex with sulfonamide, and an analgesic.

□ 1500

In August of 1983, the product was ordered off the domestic market place because the FDA had decided these combinations are ineffective. According to the world health organization, "their spectrum of activity is often so wide that they have undesirable effects on the body."

But Mr. President, even though this particular antibiotic, Uropol, was ordered off the domestic market in August 1983, the manufacturer continued to export it until December of 1984.

Please understand what I am saying. We ordered it off the domestic market in August of 1983. The manufacturer continued to export it until December of 1984, more than a year after it had been removed from the domestic market.

At least the proposed legislation would halt this practice of exporting drugs which are banned in the United States.

We should ensure that this type of practice is halted. A minimal step is to bring the export of unapproved antibiotics under the provisions of this legislation. I say to my colleagues, what reason exists not to do that?

Mr. President, antibiotic use, particularly in the Third World, has become so widespread that diseases are rapidly becoming immune.

According to Health Action International, the following is an accurate profile of antibiotic use in the Third World.

When antibiotics were first developed, they were seen as a "magic bullet" that would radically change the treatment of infectious disease. Now, however, experts are worried that the golden age of antibiotics is over.

One hundred and fifty scientists from more than 25 countries claimed in 1981 that "these antimicrobial agents are losing their effectiveness because of the spread and persistence of drug-resistant organisms. Moreover, unless steps are taken to curtail the present situation, we may find a time when such agents are no longer useful to combat diseases."

Some bacteria are naturally resistant to certain antibiotics, but often resistance is acquired. Bacteria become resistant by incorporating a "resistance factor" into their genes to render the antibiotic ineffective. This can pass quickly to other bacteria. Multiple resistance, where bacteria are resistant to several antibiotics, can also be transferred from one species to another.

The inability to treat infections with the usual antibiotic of choice—or any other drug—can be disastrous. Between 1968 and 1972, an outbreak of bacillary dysentery caused by an antibiotic resistant strain led to thousands of deaths in Central America. A similar outbreak in Bangladesh, in 1973, affected 33 percent of the population of an island in Bay of Bengal over a 3-month period.

According to the World Health Organization [WHO]:

> The problem is global and is the result of widespread and indiscriminate use of antimicrobial drugs in man and animals.

The threat of infection in the Third World through poverty, malnutrition, poor sanitation, and poor housing conditions means that antibiotics have potentially a large role to play in improving health care. In underdeveloped countries, a larger proportion of the drug budget is spent on antibiotics and antiparasitic drugs than in industrialized countries: 24 percent in India and nearly 50 percent in Tanzania, compared to 15 percent in the United Kingdom, 5.2 percent in Switzerland or 4.6 percent in West Germany. However, as in industrialized countries, antibiotics are only effective if they are properly used. The reality is very different.

In Peru during 1983, the Italian firm Carlo Erba marketed a drug containing chloramphenicol and tetracycline in a special pediatric formulation with chocolate flavoring, as a treatment for diarrhea. The drug—Quemiciclina—was so popular and its use so widespread that it became known as Erba, after its manufacturer. Some children called it sweeties for diarrhea. The BNF advises that tetracyclines should not be given to children under 12 and describes chloramphenicol as a "potent, potentially toxic antibiotic which should be reserved for the treatment of life-threatening infection." Despite Carlo Erba's intention to withdraw the drug in Peru, it was still available in Africa during May 1985. Many other antidiarrheal preparations containing antibiotics are also on the Third World market.

The massive market for antibiotics, estimated in U.S. dollars at $15 billion annually, is a major factor behind the misuse:

> Since the drug industry is profit oriented, it tries to increase the sales of antibiotics. This occurs either by increasing the volume—which leads to unnecessary prescribing—or increasing the relative proportion of expensive antibiotics, which usually are not drugs of choice. It is, therefore, questionable whether optimal prescribing of antibiotics can be attained in this context.

The WHO essential drugs list contains 16 antibiotics. In Sweden there are 90. In one British hospital, six antibiotics covered 98 percent of requirements over a 2-year period. However, about 200 antibiotics are on the market in Central America. Adequate information about adverse drug effects were frequently not provided to doctors in manufacturers' drug descriptions. Furthermore, compounds could be obtained without a prescription. Thus, there is a high potential for misuse.

Mr. President, clearly the use of antibiotics throughout the world carries many opportunities for abuse.

Let us limit these abuses by adopting this amendment and bringing antibiotics under the bill.

Mr. President, it is fair to point out that I do not believe that this is a good bill. In fact, I think this is a very bad bill. But at least it would be a step in the right direction if we brought antibiotics within the terms of the bill.

Let me address myself for a moment to the entire subject of the bill.

When this matter was about to come to the Senate, I indicated to the leadership that I had a number of amendments that I wished to be considered by this body. I indicated, in very clear terms, that I would not delay the matter of bringing it to the floor of the Senate; that, so far as I was concerned, the motion to proceed could be agreed to without any problem from the Senator from Ohio, but that when we got on the bill, I wanted to have an adequate opportunity to debate the issues, in order to offer a number of amendments.

I was on the floor on Monday, and we had an understanding on Monday that any amendments could be offered but that there would be no votes in connection with them.

I then indicated that I was prepared to go forward with respect to voting on amendments early this morning, but I was prevailed upon not to do that because it might inconvenience some Members of this body.

Then I was told that we would start at 2 o'clock, and I have indicated since about 2:30 that I was prepared to vote, and it is now 3:10.

□ 1510

It is my understanding some Members of the body are at the White House, and I do not fault them for that. But the fact is that the Senator from Ohio feels as deeply about this bill as any bill about which I have spoken on the floor of the Senate.

I am totally convinced this is bad legislation. I am totally convinced that children and adults and seniors throughout the world will suffer if we pass this legislation today.

The Senator from Ohio can count. The Senator from Ohio knows that in all probability I do not have the votes, that the pharmaceutical lobby has done a great job. But that is not the issue. I do not really care whether I get 1 vote or 5 votes or 10 or whatever.

I believe that the people of this country ought to have an opportunity to understand that this bill is bad. It will make us embarrassed not tomorrow, not next week, but a month from now, a year from now, 2 years from now.

Have we not suffered enough embarrassment as a Nation already by reason of our conduct throughout the world? Were we not embarrassed by the Bhopal incident? Did we not have a concern when they found products in Peru that should not be there that came from this country? Is it not a concern for us when we read about farmers in this country who are protesting the quality of the wheat that we are sending overseas? That only has to do with sales and whether or not you affect the sales that the farmers may make.

The legislation we have before us today is legislation that affects the lives of peoples throughout the world.

Over 20 nations have been heard from saying "Do not pass the Hatch bill."

As I said the other day on the floor of the Senate, my colleague is known nationally in this country but I had no

idea before that he was so well known internationally. To hear from little parts of India about not passing the Hatch bill, to hear from Taiwan, "Don't pass the Hatch bill," to have the issue of the Hatch bill debated on the floor of the Australian Parliament, with the Secretary of Health from Australia addressing himself to the issue.

You may have the votes to pass this legislation but that will not make it right. And this Senator wants an opportunity to offer the additional amendments that I have and does not want to be crowded in connection with that subject.

I will not delay, but I am trying to go forward now and I am not given an opportunity to do so. I am not complaining about that. I am willing to wait. But I am saying to the leadership of the Senate, I am saying to the manager of the bill, do not come back to me later and ask me to accelerate the process. Do not tell me that somebody has to go away somewhere because they have a fundraiser or because they have a party or because they have a plane to catch.

I believe this legislation is so almighty important that we ought to have a chance to adequately debate it.

I agreed to vote finally on it tomorrow at 1 o'clock, but it was my understanding we would be able to proceed forward and proceed forward in a regular order.

So I am saying to my colleague and I am not saying this in putting the responsibility on him, but I am saying I am ready, I am ready now to vote on the third amendment. I will be ready to vote after that on additional amendments. Let us proceed forward.

If you have the votes beat me, but at least I ought to have the opportunity to make the point that I wish to make.

The PRESIDING OFFICER (Mr. ARMSTRONG). The Senator from Utah.

Mr. HATCH. Mr. President, I think the distinguished Senator from Ohio is right. He has been very cooperative, and there has been a consent agreement. However, I believe we are basically on schedule.

We have temporarily set the first amendment aside to accommodate Senators who are at the White House in an important meeting, we are on the second amendment, and the distinguished Senator has had the time he needs to argue the second amendment.

But I want to take issue with my friend and colleague from Ohio with his statement that 20 nations have decried the so-called Hatch bill.

This is a lot more than a Hatch bill. Of course, I am the principal sponsor, along with Senator KENNEDY, but there are many others who are on this bill as well.

There are not 20 nations. There are people within 20 nations, most of whom are activists and many of whom are radical activists, who in some cases just hate our country and hate our corporations and who want a zero-risk pharmaceutical environment, and there is no pharmaceutical that is risk free.

Let me just say this. I want to emphasize this is a very good bill, a bill I am proud to sponsor and a bill that will help our country and will improve the situation for foreign consumers.

The Senator from Ohio has in some ways turned the debate into a battle of editorials and endorsements. But I prefer to rest on the strength and the reasonableness of the points that we are making. I would like to point out there are opinions and then there are opinions.

For depth of experience and understanding, both of the law and the realities of the marketplace, few can compare with our present and former FDA Commissioners. These are Republicans and Democrats, people with high expertise in this area. Dr. Frank Young, our current Commissioner, spoke in favor of drug export reform this past June at our committee hearing, as did Dr. Mark Novitch in 1984 as Acting Commissioner.

I have also received a letter of vigorous support for S. 1848 from Dr. Donald Kennedy, former FDA Commissioner, now president of Stanford University. And I would like to read into the RECORD a communication I received yesterday from Dr. Alexander M. Schmidt, another former Commissioner, now vice chancellor for health affairs at the University of Illinois:

> I join other former commissioners of food and drugs in strongly supporting the pharmaceutical export amendments (S. 1848) allowing U.S. manufacturers to export medicines approved in other nations. Most developed countries can and should decide what medicines they need. To think that U.S. bureaucrats can decide what medicines are safe and effective for the entire world is foolish. To force FDA into that posture is unwarranted. S. 1848 has sufficient safeguards to prevent abuse of the export provisions.
>
> To prohibit export of any drug unapproved in the U.S. will impede the development of new biotechnology in the U.S. and overseas and prevent the benefits of our scientific advances from reaching other populations.

That is pretty strong language coming from a number of former FDA Commissioners, people who have run this agency, who understand it, people who have taken safety and efficacy to heart and who have done a tremendous job of doing so.

I have also received a telegram of support from former Commissioner Herbert Lee.

Now, whatever else you may think of S. 1848, when you look at the caliber of these men you cannot believe that it is immoral, rapacious, or harmful to defenseless foreigners.

I make this observation, Mr. President, just to reinforce my contention that S. 1848 is a good, responsible piece of legislation. It will help our country and I do not feel any need to apologize for it. I am proud to offer it before this group.

UNITED NATIONS' POLICY

Much has been said about the reaction of foreign consumer activists to S. 1848. But let us take a look at the policy followed by other representative governments in the area of pharmaceutical export. Perhaps the most interesting policy statement is that contained in United Nations General Resolution 37-137, March 3, 1983. This resolution addresses policy on the export of both unapproved and banned materials. It states:

> Products that have been banned from domestic consumption and/or sale because they have been judged to endanger health and the environment should be sold abroad by companies, corporations, or individuals only when a request for such product is received from an importing country or when the consumption of such products is officially permitted in the importing country.

I note here that under S. 1848 products addressed by this sentence—that is banned products—would not be exportable at all. They would not be exportable at all under my bill. S. 1848 is therefore considerably more conservative than this part of the United Nations statement. It continues the statement:

> All countries; that have severely restricted or have not approved the domestic consumption and/or sale of specific products, in particular pharmaceuticals and pesticides, should make available full information on these products with a view of safeguarding the health and environment of the importing country, including clear labeling in a language which is acceptable to the importing country.

Thus, under this United Nations policy, the export of unapproved drugs would be handled under an information sharing system much less stringent than the protections in S. 1848. This resolution was overwhelmingly adopted by the United Nations General Assembly, including by a large majority of Third World nations. Are we to say that this is an unreasonable policy, that it is immoral, or that it is contemptuous of the safety of consumers? Of course not.

Further, Senator METZENBAUM has referred to organizations based in various countries; Belgium, Sweden, India, and so forth, and has cited us excerpts from parliamentary proceedings in Australia. But how is the judgment of a nation of these issues expressed? Through the legislation it passes, of course. And none of these nations—indeed, no other nation in the world—has imposed restrictions on the export of unapproved pharmaceuticals from its borders. I do not point this out to argue that the right position is defined by the number of countries which adhere to it. Senator METZ-

ENBAUM is quite right in saying that we must follow our wisdom regardless of what other countries do.

However, when the rhetoric gets as inflated as it has on the part of some of these activist organizations, it becomes useful as a sort of reference point, to look at what other nations have done, many of whom see themselves as champions of the Third World in the international forum. Is the reality of the situation closer to the view of the world presented by Senator METZENBAUM or the view of things which I am presenting? Each Senator must make his own judgment, but we should note that this rhetoric, these arguments, these scare tactics have persuaded no other government on earth, not even the most radical of them. Now, are we to assume that officials, Members of Parliament, and health ministers in all of these countries are corrupt, incompetent, or have out of improper motives refused to adopt what Senator METZENBAUM feels is so obviously the correct and moral policy? Of course such a conclusion is absurd. I would hope, then, that these conclusions would make us cautious in evaluating the strident calls of those who claim to speak for the foreign community.

□ 1520

The Senator has noted that efforts are underway in some of these countries and at the World Health Organization to impose some restrictions—though fewer than imposed by S. 1848—on the international trade and pharmaceutical. However, these efforts have been unsuccessful, and will continue to be unsuccessful because they are without merit. We should hardly arrange our national policy for their convenience.

In this amendment the Senator provides that unapproved antibiotics may only be exported to countries listed, and under the conditions prescribed, in S. 1848. The amendment does not apply for one year if the unapproved antibiotic is currently being exported.

We have to oppose this because antibiotics have for 40 years been readily exportable with little restriction. While there may have been some problem in the early seventies, even critics of the system acknowledge that in response to studies of the market, the industry—and particularly the U.S. drug companies—cleaned up its act. They now have an actively monitored set of industry standards, and the situation has improved drastically. FDA has testified that the current system has produced no problems. Why then should we change it? The burden of change is on those who propose it. "If it ain't broke, don't fix it."

In reliance on the current policy permitting the export of unapproved antibiotics to countries in which they are legal, many of the largest antibiotics manufacturers have located most, if not all, of their antibiotic fermentation capacity in the United States. This amendment would not only force some of these plants to close, it would for the first time lead to the export of plants and jobs to foreign countries. This is exactly the opposite reason for which this bill was conceived. Granted, the Senator's proposal would delay action for 1 year in the case of antibiotics already in production, but thereafter, the result would be just as onerous and unfair and just as costly to Americans. These facilities were built in reliance on current United States policy and on the soundness and responsibility of an industry. It would be unfair to jeopardize them for no good reason.

In the development of S. 1848, we considered nonantibiotic drugs for several years. We fashioned a reasonable bill which deserves to be enacted because it much improves the situation for nonantibiotic unapproved drugs. The question of antibiotic drugs was not investigated, nor was it considered until it was raised briefly at the mark up on this bill, and the Senator from Ohio did not propose this amendment at that time because he knew that it would have been defeated overwhelmingly in the committee.

Likewise, in the committee report, at page 38, we stated:

> Some have suggested that S. 1848 should be expanded to govern the export of antibiotics. However, the committee feels that this is not the proper time nor the proper vehicle for the consideration of such an action.

Mr. METZENBAUM. Will the Senator from Utah yield for a question?

Mr. HATCH. I am delighted to yield.

Mr. METZENBAUM. It is my understanding that the leadership on your side of the aisle is prepared to vote on this matter.

Mr. HATCH. They are. I though I would finish this and have back-to-back votes, if you would like.

Mr. METZENBAUM. I just wanted you to know that I am anxious to proceed.

Mr. HATCH. Of course. I am trying to get through the explanation on our side before we have back-to-back votes.

Mr. President, I quoted the committee report.

We did not have antibiotics in mind during the negotiation of this bill, and I would point out that they carry differing implications from nonantibiotic drugs. This is because of the particular range and severity of diseases to which they are directed, because of the unusual expense of their production, and because of their unique safety profile, among other factors. For example, humans can ingest many times the therapeutic dose of antibiotic without any harm at all, and antibiotic side effects are rare. Thus many of the safety considerations which motivated the particular provisions in S. 1848 would not likely apply to antibiotics.

Further, we do not know what the effect of this amendment will be on the industry or on the Third World if antibiotics are included. Antibiotics are the frontline of defense against the infectious diseases prevalent in developing countries, and are in essential, a vital public health tool in the Third World. This amendment would prevent the prompt delivery of new generation antibiotics to the Third World. In the last 5 years, 15 of 17 new antibiotics were approved abroad before they were approved in this country. Given that experience, the effect of Senator METZENBAUM'S amendment will be to force manufacturers to construct new antibiotics plants overseas. Antibiotics fermentation plants are among the most complex and expensive in the industry. The effect of his amendment is again to waste needlessly scarce resources of the pharmaceutical industry which could be spent on research. And it also shifts American jobs overseas.

Finally, the fact is that there is just no evidence anything needs fixing with respect to antibiotics. Some advocates of change looked forward to the NIH sponsored symposium on antibiotics use in the developing world which took place this past March. They hoped that the various task forces of renowned scientists chosen to carry out surveys of potential problem areas in antibiotics usage would provide evidence to support restriction on the international trade in antibiotics.

These advocates have not been heard from since the NIH conference. The reason is simple. The consensus was that too little is now known about potential problems from antibiotics usage under the current system and too much is known about their wonder-drug benefit and their vital place in health care to radically change the system at this point. And certainly it would be detrimental to Third World countries to change the system, to all other countries, as well. Further studies were called for, and I have no problem with that. But the need for caution was underscored by quotes like the following from the report of the task force No. 1 (p. 37):

> There are large differences in the pattern of antibiotic utilization among countries. However, the absence of data on usage that is linked to patient profile, diagnosis, duration and dosage of therapy, emergence of resistant strains, drug prices, and consumer access to drugs preclude any definitive evaluation of the effectiveness of antibiotic use in these countries. There may be as much under use as over use.

Or this one from the report of task force No. 6 (p. 111):

> The reduction in real dollar terms of the amount of illness and disability worldwide resulting from the use of antibiotics far out-

weighs the cost of any adverse effects, including bacterial resistance.

Or this quote from task force report No. 4 (p. 4):

From the data available on global morbidity and mortality, it appears that over five million deaths from viral and bacterial diarrheal disease and over three million from pneumonia occur each year. These surpass as direct causes of mortality all of the major parasitical diseases, including malaria, schistosomiasis and amebiasis. The bacterial infectious diseases also produce more death than noninfectious diseases, including accidents, heart and cerebral vascular diseases, and malignancies. Most importantly, the infectious diseases exert their greatest impact on young children.

Throughout these deliberations, the message is one of caution. These drugs are the best hope of the developing world for making significant strides against the killers of their children and adults. The available evidence points to lack of availability of the newest generation antibiotics as a significant weakness of developing nations health systems. They, even more than we in the developed world, need the very latest, most effective, broadest range antibiotic drugs. They do not need the U.S. Congress further delaying the arrival of those drugs by making them subject to this bill. The experts say the situation is not well understood, and that traditional assumptions are not supported by credible evidence. While I understand the appeal of the Senator's rhetoric, I cannot believe the greatest deliberative body in the world will move to restrict the international trade in antibiotics when we have not considered the situation in committee, and when the data we need to make a just and right decision is by scientific consensus, not even available when the vast majority of opinion is that this would be detrimental to people in the Third World.

□ 1530

It is a surprise for me to hear the Senator argue so strongly on infant formula and then turn around and bring up an amendment that truly has the potential to cause deaths.

The Senator has charged that the development of diseases with resistance to antibiotics is a problem, and rightly so. He has then stated the hypothesis that the main problem with therapy in developing countries is overuse of antibiotics and that this is the cause of resistance development. And then he has moved to the recommendation that the way to avoid overuse at the local level is to restrict the flow of antibiotics into countries by constraining the international trade in antibiotics. And from there he moves to the proposition that antibiotics should be added to S. 1848. I must admit, that after his first statement, I do not follow the chain of logic.

First of all, resistance is a very complex process which we have only recently begun to understand. An initial hypothesis was that the development of resistance would increase as the usage of the antibiotic increased. However, one of the conclusions reported at the recent NIH-sponsored conference on the use of antibiotics in the Third World is the following:

Resistance to antibacterial agents thus appears not as fixed a function of the usage of the agents but as a series of functions derived from long chains of biological opportunity. This is set in the context of a recognition of how little we know about broad patterns of evolution among bacteria and other diseases.

In contrast to the assumption that overuse is the main problem, we find the following statement from Task Force Report No. 4: "In contrast the situation in developing countries is underuse and poor usage due to the lack of availability of effective agents and self-prescribing of over-the-counter drugs." The problems identified with the use of antibiotics were not safety problems inherent in the drugs themselves, they were "proper use" problems. These issues are local and they depend on local efforts to solve them.

They are quite beyond solution by the U.S. Congress regardless of what it does with this bill. Restricting the movement of antibiotics internationally, even if it were possible, would have no positive impact on these problems, and might indeed have a negative one if the latest antibiotics were delayed through those efforts. And caution must be exercised even at the local level. No one knows better than health professionals in the Third World how scarce, for example, trained nurses and physicians are.

Thus in the face of chronic disease conditions, restricting access to antibiotics unless the patient goes through not readily available physicians, becomes a death sentence. In those cases, it may well be more humane to make antibiotics available more freely than to restrict them according to our own somewhat rarefied practice patterns.

The consensus at the NIH conference was that answers to these problems are not apparent, and that further study is needed. The report of Task Force No. 2, entitled "Resistance of Bacteria to Antibacterial Agents" carried this as its first recommendation:

1. The available data on global prevalence of resistance to antibacterials were barely adequate to sketch ranges and suggest trends. More systematic surveillance on a much larger scale is needed to provide explanations or remedies. The World Health Organization has developed detailed recommendations for such surveillance and is now beginning integrated surveillance programs in several regions of the world. This initiative should be supported and expanded.

2. Antibiotic resistance of gene products, genes, transpoons, and plasmids have been studied for their own biological interest and as tools for recombinant DNA technology. Information about their clinical significance can also be derived from some manufacturer supported studies of individual antibacterials. What are particularly needed now are broadly based studies of the deployment of these genetics elements in natural populations of bacteria in order to explain the phenomena observed in surveillance and to suggest practical strategies for containment and reduction of resistance.

The bottom line is that there was no suggestion that the solution to these problems was known, much less that it lay in restricting the international flow of antibiotics.

Thus, the resistance issue can contribute nothing to our discussion this afternoon. We simply don't know enough about it, about its causes, or about how to manage it, in order to adopt a course of action, and then decide whether or not the current policy on antibiotics advances or retards that course of action.

Mr. METZENBAUM. Is the Senator now prepared to move?

Mr. HATCH. If it is all right, I will move to table the first amendment, and then should we ask for a unanimous consent to have a second amendment back to back?

Mr. METZENBAUM. Mr. President, if I may be recognized.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the pending amendment be set aside in order that we may immediately proceed to vote in connection with amendment No. 1948, and that at the conclusion of that vote the pending business will be amendment No. 1950, the present amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

MOTIONS TO TABLE

Mr. HATCH. Mr. President, I move to table the first amendment, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. I also move to table the second amendment, so they can go back to back. I ask for the yeas and nays.

The PRESIDING OFFICER. Will the Senator restate the request?

Mr. HATCH. I ask unanimous consent I be permitted to also move to table the second amendment so that we can have the votes back to back.

Mr. METZENBAUM. I have to object to that on behalf of the minority leader.

The PRESIDING OFFICER. Objection is heard.

VOTE ON MOTION TO TABLE AMENDMENT NO. 1948

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Utah to lay on the table the amendment of the Sena-

tor from Ohio. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Florida [Mrs. HAWKINS], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Maryland [Mr. MATHIAS], and the Senator from Oregon [Mr. PACKWOOD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Vermont [Mr. LEAHY] is absent because of death in family.

I further announce that, if present and voting, the Senator from Vermont [Mr. LEAHY] would vote "nay."

The PRESIDING OFFICER (Mr. EVANS). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 29, nays 66, as follows:

[Rollcall Vote No. 94 Leg.]

YEAS—29

Armstrong	Hatch	Simpson
Cochran	Hecht	Stafford
Danforth	Helms	Stennis
Domenici	Laxalt	Symms
East	Long	Thurmond
Evans	Lugar	Wallop
Garn	McClure	Warner
Goldwater	McConnell	Weicker
Gorton	Quayle	Zorinsky
Gramm	Roth	

NAYS—66

Abdnor	Durenberger	Mattingly
Andrews	Eagleton	Melcher
Baucus	Exon	Metzenbaum
Bentsen	Ford	Mitchell
Biden	Glenn	Moynihan
Bingaman	Gore	Murkowski
Boren	Grassley	Nickles
Boschwitz	Harkin	Nunn
Bradley	Hart	Pell
Bumpers	Hatfield	Pressler
Burdick	Heflin	Proxmire
Byrd	Heinz	Pryor
Chafee	Hollings	Riegle
Chiles	Inouye	Rockefeller
Cohen	Johnston	Rudman
Cranston	Kassebaum	Sarbanes
D'Amato	Kasten	Sasser
DeConcini	Kennedy	Simon
Denton	Kerry	Specter
Dixon	Lautenberg	Stevens
Dodd	Levin	Trible
Dole	Matsunaga	Wilson

NOT VOTING—5

Hawkins	Leahy	Packwood
Humphrey	Mathias	

So the motion to lay on the table amendment No. 1948 was rejected.

□ 1540

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. RIEGLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on amendment No. 1948.

Mr. HATCH. Mr. President, I will be happy to accept the amendment at this point. The vote was overwhelming in favor of the amendment. I do have to say this to all my colleagues.

The PRESIDING OFFICER. If the Senator will withhold, the Senate is not in order. Will those talking in the aisles please retire to their seats or the cloakroom.

□ 1600

Mr. HATCH. Mr. President, I have to say this to my colleagues: It is an easier vote to vote for this, but the correct vote would have been to vote to table; because now every batch—which now is tested every 3 months under FDA, and adequately so—will have to be tested for every ingredient. So I expect that the formula will be very costly—it will cost more than it does now. It will be a detriment to people in poverty and low-income people.

Be that as it may, we will be happy, without voting on the amendment to take the amendment at this time.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the yeas and nays on this amendment be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1948) was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed do.

AMENDMENT NO. 1950

Mr. HATCH. Mr. President, as I understand it, we will now move to the antibiotics amendment.

Mr. METZENBAUM. That is correct.

The PRESIDING OFFICER. Amendment No. 1950.

Mr. HATCH. Mr. President, I believe the distinguished Senator from Ohio would like a few minutes to express his viewpoint with regard to the antibiotics amendment. I would like a few minutes to respond, and then I think we can tell our colleagues that we are ready to vote on that amendment.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I will not be long.

This amendment is very simple. It says that antibiotics should be included within provisions of the bill. At the present time, there are no limitations at all with respect to exporting antibiotics overseas.

As Members of this body know, I do not support the basic bill, but I do believe that the basic bill is better than no bill at all. I believe there is no logic or reason why antibiotics should not be included within the terms and provisions of the legislation. That is all that is involved in connection with this amendment. It does not do anything more or less.

Mr. KENNEDY. Mr. President, I will just take a moment of the Senate's time on this issue.

May we have order, Mr. President?

The PRESIDING OFFICER. The Senator from Massachusetts is correct. The Senate is not in order. Senators conversing will retire to the cloakrooms or to their desks.

Mr. KENNEDY. Mr. President, I just want to review very briefly for the Senate why this amendment is needed, and I will support it when the rollcall occurs.

About 15 or 18 years ago, before we had a mass movement of the major drug companies overseas, we had the distribution of a number of antibiotics around the world, and there was the export of chlorphorminol to Mexico and to South America. It was abused in those countries. It was an over-the-counter antibiotic and was abused, and it was the direct cause of hundreds of deaths among infants and children in those countries.

The fact is that many of the major drug companies have moved overseas. Many of the drug companies today, because there is no restriction in exporting antibiotics, continue to do so, and they do not have to go through the rigor of FDA approval. If those antibiotics are related in a chemical way to existing antibiotics, that existed before the FDA, they still do not have to be approved, so they can be exported around the world.

Mr. President, I believe that if we are going to follow the rationale for this legislation, we ought to insist that the antibiotics that are going to be exported meet the same kinds of tests that we have included in terms of the export of prescription drugs. So I will support that position. It has been my position for a number of years.

Having said that, Mr. President, I am troubled by the fact that our good friend from Ohio is saying—I think he said—that the basic bill is better than no bill at all, that he recognizes the importance of including any antibiotics in this kind of regime. There is a logic to that, for those of us who support it, and yet he is in the position that he does not believe that the existing regime is going to be effective.

You cannot have it both ways. It either makes some sense or it does not. It is going to ensure that we have a greater reliability. It is going to ensure that here in the United States, when various drugs or antibiotics are going to be exported overseas, the FDA will have a greater power to control these various elements in terms of quality and in terms of the potential danger to host countries.

So I hope, first of all, that this amendment will be accepted. But I also hope that if the Senator is prepared to believe that this is a valuable amendment and is worthwhile—and I know he does, because I have heard him speak to it—he will give consideration to supporting the legislation. Otherwise, I think there will be those who will rise and say that they are sympathetic to this idea, but this kind of amendment at this time is not appropriate. I think it is appropriate, and I will support it. But I hope that all those who followed the arguments of the Senator from Ohio for the past days about the whole regime and the whole structure that has been developed over a long period of time, with very careful negotiation, will support the legislation.

Obviously, it could be strengthened and changed and approved, as I believe we have just done on the issue of the infant formula. At this time, this makes the legislation more important and more significant, and I hope it will gain the support of those in this body who have any hesitancy in supporting the legislation.

Mr. HATCH. Mr. President, I find it somewhat inconsistent that the Senator from Ohio is so concerned about Third World countries with the infant formula.

When, at the same time, the distinguished Senator from Ohio is arguing that we should bring antibiotics under the purview of this bill. The purpose of this bill is to end this business of American companies going offshore and taking jobs with them, then selling any drug they want anywhere in the world, whether or not it is approved by anybody. That is current law, and it is terrible. This bill would end that.

This bill invites them back and gives them incentive to come back to this country. It says that even if FDA has not approved, if an FDA equivalent country—meaning a country that has a process as good as FDA, and there are 12 we list in this bill—approves a pharmaceutical, it can be manufactured in America and sold to first- and second-tier countries.

They are basically developed countries, totally capable of protecting themselves and taking care of themselves.

Our system does take about $80 million and 10 years to develop a product. The distinguished Senator from Ohio now wants to bring antibiotics within the purview of this bill.

There is no evidence that antibiotics have been misused in the world, even in Third World countries. If this amendment is adopted, these antibiotics are not going to become available, as they are developed, to Third World and other countries, without FDA approval, without approval by many people. That means that Third World countries, which need them the most, are going to be deprived of them.

Next, I might add that most U.S. antibiotics plants are located domestically. If the Senator from Ohio's amendment is accepted, U.S. companies are no longer going to invest the type of capital needed to develop antibiotic drugs in this country.

So one of the very things we are trying to do in this bill—to prevent the loss of biotechnology, the loss of innovativeness, the loss of science offshore, the loss of our companies, and the loss of jobs—would be defeated by this amendment. This amendment will amount to all those, while at the same time doing a disservice to the millions who are dying, or who will die, because they cannot get new forms of antibiotics. It seems inconsistent, but that is the way it is.

□ 1610

There is a lot that can be said. Antibiotics have for 40 years been readily exportable with little or no restrictions.

There were some problems in the 1970's but those problems have been resolved by a responsible industry. Even critics of the system acknowledge that in response to studies of the market, the industry and particularly the U.S. drug companies have done what is right; they have actively monitored industry standards, and they have solved the problems.

FDA has testified that currently there are no problems and that the current system has produced no problems.

Antibiotics have not been considered in committee. They are different from regular drugs. They are considerably safer. You can take many times the dosage without fear and without problems. Everyone but the Third World, in particular, depends on them and must depend on them.

Scientific experts say that the evidence simply is not there to change the current patterns of antibiotics trade and usage. The system has worked for 40 years. It really does not need changing.

It would undermine this bill tremendously if this amendment were to pass.

So I hope that my colleagues will keep that in mind.

This is landmark legislation. It improves current law. It protects people all over the world. It keeps jobs here and, frankly, causes us to not have to import the very drugs we could have manufactured here as a result of companies moving offshore. That is what is going to happen. That is what has happened under current law with regard to other pharmaceuticals.

Mr. KENNEDY. Mr. President, will the Senator yield for a question?

Mr. HATCH. I am delighted to yield.

Mr. KENNEDY. As I understand, when the FDA was established in 1938, it excluded many of the preexisting drugs that had been used or antibiotics that had been in use in our country; is that correct?

Mr. HATCH. That is correct.

Mr. KENNEDY. As a result, the drugs that were used prior to 1938 have been used for their derivative or their chemical derivative or equivalent. So many of even the new antibiotics that are on line now are very close in terms of chemical content to those that were at least accepted prior to 1938.

Those could be exported without any kind of review or without any kind of oversight.

That is what we found in the tragedies in Central and South America in the last 15 or 20 years.

Our former colleague, Senator Nelson, did a very extensive set of hearings on this for the Senate and provided extraordinary documentation of what had actually developed.

We have talked about this with the Senator from Utah. I do think that perhaps a strong case or even a stronger case could be made with regard to these particular items than the drugs themselves. I know we are on opposite sides on this issue. But it does seem to me that this amendment is justified if we are going to follow logic and the rationale of the legislation.

I know the Senator reaches a different conclusion, but I would hope that Senator METZENBAUM'S amendment would be accepted.

Mr. HATCH. Mr. President, any drug since 1938 would be covered by this. The new technology and drugs will be developed through DNA, and the amendment is going to exclude all those antibiotics for use throughout the world.

The current treatment of antibiotics is consistent with U.N. policy, which dictates that antibiotics should be accessible to people in Third World countries; U.N. policy sees this as vital. Under Senator METZENBAUM'S proposed amendment, only those antibiotics identical to those developed before 1938 would escape this heavy regulation.

This amendment will cost lives all over the world. Much of the future of new drug development is going to come through DNA, and these new drugs will all be covered by this amendment should this amendment be adopted.

This amendment will lead to a loss of jobs around the world and certainly from this country. And it will serve to further increase the balance-of-trade deficit.

Thus, I encourage colleagues to vote this amendment down.

If the distinguished Senator from Ohio wants to make further comment, I yield the floor to him.

Mr. METZENBAUM. Mr. President, let me address myself to this amendment. I appreciate very much the support of Senator KENNEDY who certainly had a great deal of experience in this entire area. I had said that bringing the antibiotics under the bill is better than not at all. The reason for that is that antibiotics now can be exported with no limitation. Regular drugs cannot be exported.

What this bill proposes to do is to provide a procedure for them to be exported, but in doing so it fails to provide the necessary protection that I believe is so important. But my amendment now would provide that antibiotics would come under the bill which, as I said, is better than nothing as pertains to antibiotics.

But as far as drugs are concerned, the bill still makes no sense. In fact, it is bad legislation. I believe that those who support this legislation—I do not happen to be one of them—would want to see to it that it is sufficiently all encompassing to include all drugs that are exported, antibiotics or otherwise. Under the legislation as it is before us on the floor, all drugs will be covered by the bill. My amendment, which has been supported by Senator KENNEDY, is an amendment that would provide that antibiotics would be covered by the same provisions as those that are presently in this legislation.

So I would hope that those who support the bill as well as those who may oppose the bill would recognize that we ought to treat all drugs equally, antibiotics as well as those that are in that category.

Therefore, I would hope that you would see fit to defeat the motion to table which I understand my colleague from Utah is about to make.

I say to the Senator form Utah I am prepared to vote.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. HATCH. Mr. President, I move to table the amendment, and ask for the yeas and nays.

THE PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

THE PRESIDING OFFICER. The motion to table is not debatable.

The question is on agreeing to the motion of the Senator from Utah to lay on the table the amendment of the Senator from Ohio.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

□ 1620

Mr. EXON (when his name was called). Mr. President, on this vote I have a pair with the Senator from Vermont [Mr. LEAHY]. If he were present and voting, he would vote "nay." Therefore, I withhold my "aye" vote.

Mr. SIMPSON. I announce that the Senator from Florida [Mrs. HAWKINS], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Maryland [Mr. MATHIAS], and the Senator from Oregon [Mr. PACKWOOD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Vermont [Mr. LEAHY] is absent because of death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 76, nays 18, as follows:

[Rollcall Vote No. 95]

YEAS—76

Abdnor	Evans	Murkowski
Andrews	Ford	Nickles
Armstrong	Garn	Nunn
Baucus	Glenn	Pressler
Bentsen	Goldwater	Pryor
Biden	Gore	Quayle
Boren	Gorton	Riegle
Boschwitz	Gramm	Rockefeller
Bradley	Grassley	Roth
Byrd	Hatch	Rudman
Chafee	Hatfield	Sasser
Chiles	Hecht	Simpson
Cochran	Heflin	Specter
Cohen	Heinz	Stafford
Cranston	Helms	Stennis
D'Amato	Hollings	Stevens
Danforth	Johnston	Symms
DeConcini	Kassebaum	Thurmond
Denton	Kasten	Trible
Dixon	Lautenberg	Wallop
Dodd	Laxalt	Warner
Dole	Long	Weicker
Domenici	Lugar	Wilson
Durenberger	Mattingly	Zorinsky
Eagleton	McClure	
East	McConnell	

NAYS—18

Bingaman	Kennedy	Mitchell
Bumpers	Kerry	Moynihan
Burdick	Levin	Pell
Harkin	Matsunaga	Proxmire
Hart	Melcher	Sarbanes
Inouye	Metzenbaum	Simon

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Exon, for.

NOT VOTING—5

Hawkins	Leahy	Packwood
Humphrey	Mathias	

So the motion to lay on the table amendment No. 1950 was agreed to.

□ 1640

Mr. HATCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. METZENBAUM. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1952

(Purpose: To require that, to be exported, any unapproved drug must be subject to a new drug application)

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the amendment pending at the desk, which I believe to be No. 1949, be temporarily laid aside in order that the Senator from Ohio may send an amendment to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 1952.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 27, beginning with line 27, strike out through line 7 on page 28 and insert the following:

"(D) in the case of a drug to be shipped to a country on a list established under clause (i) or (ii) of paragraph (2)(A)—

"(i) an application for approval or licensing has been submitted or approved for the drug and the drug has not been the subject of any action by the Secretary or the Secretary of Agriculture denying, withdrawing, or suspending approval or licensing on the basis of safety or effectiveness or otherwise banning the drug; and

"(ii) such application has not lapsed or has not been withdrawn;

Mr. METZENBAUM. Mr. President, the amendment which I have sent to the desk is very basic. All it does is ensures that before an unapproved drug can be exported from the United States it at least has finished some basic clinical trials and is the subject of a new drug application before the Food and Drug Administration. We want to be certain that that which is possible under the pending bill not become the law. Under the pending bill, if you file the application, you are in a position to export. In other words, nothing has been done by the Food and Drug Administration. Nothing is in the pipeline moving it. It is just at the very earliest stages.

All we are suggesting with this amendment is a change at the point in the pipeline where you are permitted to make the exports that are provided for in the bill.

The purpose of this is to ensure that these drugs are in that pipeline moving along in the approval process, not merely having just been filed.

I strongly believe that any approved drug for export should have reached at least this stage of the process before it can be sent abroad.

The measure before us only requires that the unapproved drug have an IND, investigational new drug exemption, in order to be exported.

The problem is this: 90 percent of the drugs drop out of the FDA approval process after the IND state, which

is really the first step on the road to approval by our own Food and Drug Administration.

Let me be certain that those within hearing of my voice understand that we are talking about IND as an investigational new drug exemption.

Recently, I asked the Food and Drug Commissioner whether this IND provision really offers any realistic protection at all.

His response was the following:

The premise of the question is correct. Requiring that the exported drugs have an existing IND provides no assurance that the drugs in question will ever be approved in the United States. It is also true that no IND can give an absolute assurance of a drug's safety. It is understood that, for any drugs, adverse reactions may appear in a large postmarketing population that do not appear during clinical trials. Therefore, while the existence of an IND under which patients are being treated for the drug clearly provides some information about the safety of the drug, the amount of information is limited. It is also important to recognize that the bulk of the data collected under an IND is seen by the FDA only when a new drug application is submitted, except for severe adverse reactions that must be reported promptly to the agency.

The existence of an IND only means that there have been adequate studies conducted on animals to demonstrate that the drug is reasonably safe to test in humans and under carefully controlled conditions.

He concluded by saying:

Preliminary testing may then provide at least some information regarding the appropriateness of considering further use of the drug in humans.

Mr. President, I want to reemphasize an IND only means that the drug has been tested on animals. No human testing has been done.

My amendment simply moves the unapproved drug further along the approval process so that at least we know that clinical tests have been performed. I should point out that according to the FDA, the agency has to date approved only 62 percent of all original NDA applications, which means the existence of a NDA, or New Drug Application, is also no guarantee that the drug will eventually be approved in this country.

But at least, Mr. President, we will be providing more protection by moving the drug further along our own approval process. I believe the amendment is a reasonable one. I believe it provides only minimal protection. It does not say that you have to go all the way through the process and get the approval. It says that you have to go further along the process than merely filing it after you have conducted some tests on some animals. It requires some clinical testing on humans.

We must keep in mind that under any version of this legislation, transshipment or reexport cannot be prevented. We must assume that these drugs can and will end up in the Third World. Why should we not provide some minimal protection by requiring that the unapproved drug pass at least some basic clinical test before it can be exported from our shores?

The Senate should know just how easy it is for a company to keep a drug in a pipeline at the IND stage and really do nothing to move it along.

Let me quote again from the FDA and their response to a question asking for the distinction between an active and an inactive IND. "In general," said they, "a lack of activity in an IND does not provoke any FDA action, and we do not routinely monitor such activity with a view to taking regulatory action in the event of finding low activity." They went on to say:

An active IND is one that has not been discontinued or terminated. Studies do not have to be ongoing for an IND to be active. For example, the investigation may have been completed, but the sponsor may anticipate future studies under the IND. In order to keep the IND on active status, the sponsor need only report in the annual progress report of its intentions to resume the studies or that no clinical studies are being conducted. In general, if annual reports are received, FDA takes no further action. Under the law, however, the clinical investigation of a new drug may not be unduly prolonged. Therefore, failure to conduct investigations under the IND for several years could lead FDA to conclude that the investigation is being unduly prolonged and the sponsor might be requested to either discontinue the IND or develop a new drug application.

They concluded by saying:

While this is possible, such action is rarely taken. We prefer to let sponsors take their own decisions as to the pace of investigation.

Clearly, a drug could languish in the IND limbo for a long period of time. The bill has no time limit on how long the drug can stay at this most preliminary stage of FDA approval. This just reemphasizes the point that the IND provides no real protection for consumers in this legislation.

I say to my colleagues, let us at least require that the drug has clinical tests behind it. Let us give people some measure of protection. This is a minimal amendment. It does not kill the bill. It simply provides a little more protection for the people around the world who will be using these unapproved drugs.

I want to say to my colleagues, I am a realist. I said it before. I understand that many of these amendments will not be accepted because one Senator after another comes up to me and says, "Oh, you know, we have these drug companies or these pharmaceutical companies in my State." But I want to impress upon you that although they may make the argument that it in some way is going to affect their companies, think a little beyond that and think about the peoples of the Third World who may indeed be harmed by these drugs. They are the ones who have been writing to us. They are the ones, 20 nations throughout the world, that have written in and indicated their concern. Let me recite for my colleagues the countries from which we have already heard: Australia, in which the Minister of Health is engaged in debate and a Member of Parliament who indicated their concern about the Hatch bill; Nigeria, Malaysia, the European Economic Community Consultative Committee, England, Greece, Netherlands, Israel, several communications from India, Belgium, Thailand, and China. We have not debated a bill on the floor of the Senate in a long time, certainly one having to do with that which ostensibly would pertain only to domestic issues, that would have as much impact on America's image throughout the world as does this bill.

Now, my colleagues may decide to vote against this amendment and other amendments as well because for some reason there is an "engine" going—we have to pass this bill for the pharmaceutical companies.

We do not have to pass this bill for the pharmaceutical companies. There is no particular argument that can be made that they need it. The pharmaceutical companies in this country, the drug manufacturers, are doing exceptionally well. Look at their earnings record. The real issue, is, are we going to stand up and indicate our concern and our convictions? Are we willing to stand up and vote against this special interest lobby that has done such an effective job?

I knew as I came out on the floor of the Senate that it was going to be rough go. I was told that it would be a rough go and it would be hard to get votes. But the fact is, it is wrong, it is as wrong as it can be, to pass a bill to let a pharmaceutical company merely make a filing with the Food and Drug Administration and then send their products throughout the world. If we truly have concern, if we have compassion, if we have the intelligence which I am sure we do, to understand what this is all about, my colleagues will accept this amendment.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, this provision requires drug manufacturers to seek approval in this country at the same time that they are seeking approval abroad. Now, many small pharmaceutical companies, such as the biotechnology concerns, which we all have to be concerned about because that is the source of new innovations in pharmaceuticals, will be unable to afford the expense of seeking approval simultaneously in this country and overseas. Imposing the requirement in the Senator's amendment will force those companies, including biotechnology concerns, to license their tech-

nology to foreign manufacturers, precisely what this bill is trying to stop. We want to stop the erosion of our innovation and our engineering in our scientific community to foreign countries. We want to stop the emigration of jobs, especially since we have a way of doing it in a reasonable way that literally protects lives.

For the life of me, I cannot understand why anybody would not understand that this bill is such an improvement over current law which facilitates American companies moving offshore, manufacturing anything they want and selling it anywhere they want without restriction, without regulation. We propose to bring them back on shore restrict them to regulatory approval by at least an FDA equivalent country, and name the 12 major countries of the world with a drug regulatory agency capable of that task.

The amendment would undercut the intent of the bill to keep jobs in this country. Companies which are able to pursue approvals in different countries at the same time generally do not start the different processes on the same date. And given FDA's drug review lag, they often find themselves years away from being able to even file an NDA application in this country when they are nearing approval elsewhere. The necessity of gearing up to meet the foreign market would make it impossible for them to wait for export authority under this bill. They would simply be forced to build production capacity overseas, as they do now. In short, this amendment would destroy much of the incentive the bill offers.

The IND clinical investigative time period, which lasts until the NDA application is filed, is almost always much longer than the NDA final review period itself. Under the committee approach a manufacturer with a foreign approval would be able to build his plant and produce here at the beginning of the IND period, typically some 5–6 years before approval. Under the proposed amendment, he would have to forgo production for 3 years or more unless he builds overseas, since the NDA filing generally precedes approval by 18 months to 3 years.

Finally, the bill as written would permit biotechnology companies to export to tier I countries intermediates of biological products. These small biotechnology companies perform only one of the several processing steps such as cell replication, necessary to produce a drug utilizing biotechnology methods. Generally, they produce a crude form of the drug which must be refined before it is suitable for testing or use in humans. This intermediate work is performed on a contract basis for another company, often a foreign pharmaceutical house. But these contract companies cannot file an application for approval in the United States because they have no licensing rights from the manufacturer and no access to the safety and effectiveness data regarding the drug. Thus this amendment would bar export of the unfinished products and preclude our U.S. biotechnology firms from competing for these foreign contracts.

Mr. President, I move to table the amendment.

Mr. METZENBAUM. addressed the chair.

Mr. HATCH. I withdraw that request.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. The argument has been made by the distinguished Senator from Utah that companies could move offshore and do the same thing. Let them. They can do it now. But it is not satisfactory with them. If they could do it, why would they be mounting this massive lobbying effort to pass this bill? The reason they want this bill is not because they are such wonderfully patriotic citizens that they want to bring their operations back to this country. There is nothing in this bill that talks about bringing any operations back. What they want to do is ship overseas the products that they are manufacturing in their plants in this country without there being adequate protection. They can still do it after the Hatch bill. They can still send their products overseas to be manufactured. That is a specious argument. If there were one line in the bill that said a company which does this may not operate overseas, I would understand that. But there is nothing in the bill that even suggests that. No one came before our committee and said, "If you pass this bill, we are going to bring back the operations to this country." That does not exist. That is a world of make believe. That is not what the facts are.

□ 1700

They want this bill so that they can manufacture in this country, in the plants they presently have operating, and send their products throughout the world, without adequate protection.

The argument is made that we are going to send them to other countries that have facilities as good as ours. The Senator from Utah knows that there already have been discussions in the House about adding seven more countries, besides the 15 listed here. In addition, the Secretary of Health and Human Services has the right to designate the second-tier countries, and the second-tier countries can be anybody that the Secretary of HHS decides upon.

Mark my word: With the heavy-hitting lobbyists we have around this community, there are many countries that will be added to the list by the Secretary of HHS. Go out and hire your hired hand, your loaded gun, and he will be able to go over to HHS, and maybe he will have been the former Secretary of HHS. That is the way it works around here. Or a Deputy Secretary, or special counsel for him.

No, this bill is not going to provide protection for the people in the third world, and that is why they have been sending in so much mail. Can you believe it? Twenty countries have been heard from—well over a hundred communications. These have not been from a single individual. This has been from large-based community organizations, medical people.

I had a man call upon me the other day, a very able individual, from Bangladesh, literally pleading, saying: "I'm in the pharmaceutical business. We have great respect for American pharmaceuticals, but don't send us that which you are not willing to use on your own people. If you are not willing to use it, don't send it to us."

People throughout the world believe that when it says "Made in America," they can count on it, that it has been checked. But it will not have been checked under this legislation.

All we are saying with this amendment is that you have to take the process a little further along the pipeline than at the present. The way the bill presently reads, all you have to do is file, and then you can start exporting. We are saying: "No, you ought to go further along the pipeline, to provide some element of protection, to have some clinical testing with respect to humans, at least to indicate you are doing that."

Mr. President, I think this amendment makes good sense. If the Senator from Utah wishes an up-or-down vote, that is fine with me. If he wishes to table it, that is fine with me. My guess is that he will have the votes, but he will not have right on his side.

Mr. HATCH. Mr. President, I enjoy listening to the Senator from Ohio more than any other Senator. Maybe that is one reason why I have such a migraine headache today.

Mr. METZENBAUM. Use exported drugs.

Mr. HATCH. Maybe I had better import some headache pills to take care of it.

Mr. President, I think it is very apparent that this amendment would undermine the whole intent of this bill. The intent of this bill is to solve problems that presently exist. Everything the Senator talks about exists under current law, and people literally are suffering all over the world because of it. What this bill does is that it runs into the process American companies by giving them incentive to stay here, create jobs here, solve the balance of payments problem, keep our technolo-

gy here, and keep us preeminent in the world in the field of pharmaceuticals. If the Senator's amendment is adopted, then basically it would negate the purpose of this bill.

We could go on and on, and many arguments could be made. Virtually everything the Senator says is rebuttable. At least, it has been cleared up that there are not 20 countries against this bill, but that people in 20 countries, and mostly radical organizations who do not believe in any company, are against what we are trying to do.

With that, Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

□ 1710

Mr. EAGLETON (when his name was called). Mr. President, on this vote I have a live pair with the Senator from Vermont [Mr. LEAHY]. If he were present, he would vote "no." I have previously voted "yea." I withhold my vote.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. ARMSTRONG], the Senator from Florida [Mrs. HAWKINS], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Oregon [Mr. PACKWOOD], and the Senator from Idaho [Mr. SYMMS], are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Vermont [Mr. LEAHY], is absent because of death in the family.

□ 1720

The PRESIDING OFFICER (Mr. BOSCHWITZ). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 83, nays 10, as follows:

[Rollcall Vote No. 96 Leg.]

YEAS—83

Abdnor	Domenici	Kennedy
Andrews	Durenberger	Kerry
Baucus	East	Lautenberg
Bentsen	Evans	Laxalt
Bingaman	Exon	Levin
Boren	Ford	Long
Boschwitz	Garn	Lugar
Bradley	Glenn	Mathias
Bumpers	Goldwater	Matsunaga
Burdick	Gore	Mattingly
Byrd	Gorton	McClure
Chafee	Gramm	McConnell
Chiles	Grassley	Mitchell
Cochran	Hatch	Murkowski
Cohen	Hatfield	Nickles
Cranston	Hecht	Nunn
D'Amato	Heflin	Pell
Danforth	Heinz	Pressler
DeConcini	Helms	Pryor
Denton	Hollings	Quayle
Dixon	Johnston	Riegle
Dodd	Kassebaum	Rockefeller
Dole	Kasten	Roth
Rudman	Stennis	Warner
Sasser	Stevens	Weicker
Simpson	Thurmond	Wilson
Specter	Trible	Zorinsky
Stafford	Wallop	

NAYS—10

Biden	Melcher	Sarbanes
Harkin	Metzenbaum	Simon
Hart	Moynihan	
Inouye	Proxmire	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Eagleton, for.

NOT VOTING—6

Armstrong	Humphrey	Packwood
Hawkins	Leahy	Symms

So the motion to lay on the table amendment No. 1952 was agreed to.

□ 1730

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, is the Senator from Ohio correct that his amendment No. 1949 is the pending business?

The PRESIDING OFFICER. That is correct.

Mr. METZENBAUM. Mr. President, this amendment provides for notification to the various embassies throughout the world when products are shipped into those countries.

It is my understanding after conversation with my distinguished colleague from my own State, Senator GLENN, the senior Senator from our State, that he has an amendment that he would like to offer as a substitute for my amendment which, as I understand it, would actually provide for a broader coverage than even the amendment that I have offered.

I wonder if the senior Senator from Ohio would care to be heard at this point.

Mr. GLENN. Yes. I appreciate that very much.

AMENDMENT NO. 1953

(Purpose: To reform certain regulatory procedures governing the export of banned and severely restricted substances)

Mr. GLENN. Mr. President, my amendment covers a broader spectrum than that covered by my distinguished colleague from Ohio. I would like, if it meets with his approval, to substitute this amendment for his, if he has no objection.

Mr. METZENBAUM. I have no objection. If the Senator is moving to substitute the amendment, I am prepared to accept the substitute.

Mr. GLENN. Mr. President, I submit the amendment as a substitute for the pending amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. GLENN] for himself and Mr. PROXMIRE, proposes an amendment numbered 1953 to amendment No. 1949.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed, insert the following:

SEC. 9. (a) Not later than December 31 of each year, the Director of the Office of Management and Budget shall prepare for the Department of State which, in turn shall provide and inform the public and foreign governments, through their embassies in the United States or other appropriate means, an annual report which summarizes—

(1) all final agency actions taken during the preceding fiscal year with respect to banned or severely restricted substances, and

(2) any additional action taken during the preceding fiscal year with respect to banned or severely restricted substances which were first banned or severely restricted during a fiscal year prior to the fiscal year covered by the report.

(b)(1) No banned or severely restricted substance may be exported from the United States unless—

(A) the person intending to export the substance from the United States provides written notice to the agency responsible for carrying out the provision of law specified in subsection (c) which is applicable to the substance, prior to the first shipment to a country after regulatory action, stating such person's intent to export the substance and the intended country of destination; and (d) in addition notice be made to foreign embassies of all final regulatory actions at the time they are taken.

(B) the agency provides the Secretary of State with a statement concerning the substance which contains—

(i) the name of the substance;

(ii) a summary of any action taken by the agency with respect to the substance, including a description of the grounds for such action and a citation of the statutory authority for such action;

(iii) a description of the determined risks to human health or safety or to the environment that may result from the use of the substance; and

(iv) a specification of the officer or employee of the agency who may be contacted by the government of any foreign country to which the substance is intended to be exported in order to obtain additional information about the substance; and

(C) the Secretary of State delivers a copy of the statement submitted under subparagraph (B) to an appropriate official in the embassy of the country of destination or transmits it to such country by other appropriate means.

(2)(A) The provisions of paragraph (1) shall supersede any other provision of the law to the extent such provision is inconsistent with paragraph (1).

(B) No law enacted after the date of the enactment of this Act shall supersede this subsection unless it does so in specific terms, referring to this Act and declaring that the new law supersedes the provisions of this subsection.

(C) Nothing in this subsection authorizes the disclosure to the public of bona fide

trade secrets or other confidential business information.

(c) For the purpose of this section, the term "banned or severely restricted substance" means—

(1) a food or class of food which—

(A) is adulterated, as defined by rules or orders issued under section 402 (a) or (c) (21 U.S.C. 342 (a) or (c)), or

(B) is in violation of emergency permit controls issued under section 404 (21 U.S.C. 344),

of the Federal Food, Drug, and Cosmetic Act;

(2) a drug which is—

(A) adulterated as defined by rules or orders issued under section 501 (a), (b), (c), or (d) (21 U.S.C. 351 (a), (b), (c), or (d)),

(B) misbranded, as defined by rules or orders issued under section 502(j), (21 U.S.C. 352(j)), or

(C) a new drug or new animal drug for which an approval is not in effect under section 505 (21 U.S.C. 355) or section 512 (21 U.S.C. 360), respectively,

of the Federal Food, Drug, and Cosmetic Act;

(3) an antibiotic drug which has not been certified under section 507 (21 U.S.C. 357) of the Federal Food, Drug, and Cosmetic Act;

(4) a drug containing insulin which has not been certified under section 506 (21 U.S.C. 356) of the Federal Food, Drug, and Cosmetic Act;

(5) a device which—

(A) is adulterated, as defined by rules or orders issued under section 501(a) (21 U.S.C. 351(a)),

(B) is misbranded, as defined by rules or orders issued under section 502(j) (21 U.S.C. 352(j)),

(C) does not conform with a performance standard issued under section 514 (21 U.S.C. 360d),

(D) has not received premarket approval under section 515 (21 U.S.C. 360e), or

(e) is banned under section 516 (21 U.S.C. 360f), of the Federal Food, Drug, and Cosmetic Act;

(6) a cosmetic which is adulterated, as defined by rules or orders issued under section 601 (21 U.S.C. 361) of the Federal Food, Drug, and Cosmetic Act;

(7) a food additive or color additive which is deemed unsafe within the meaning of section 409 (21 U.S.C. 348) or section 706 (21 U.S.C. 376), respectively, of the Federal Food, Drug, and Cosmetic Act;

(8) a biological product which has been propagated or manufactured and prepared at an establishment which does not hold a license as required by section 351 (42 U.S.C. 262) of the Public Health Service Act;

(9) an electronic product which does not comply with a performance standard issued under section 358 (42 U.S.C. 263f) of the Public Health Service Act;

(10) a consumer product which—

(A) does not comply with a consumer product safety standard adopted under sections 7 and 9 (15 U.S.C. 2056 and 2058) other than one relating solely to labeling,

(B) has been declared to be a banned hazardous product under sections 8 and 9 (15 U.S.C. 2057) and 2058),

(C) presents a substantial product hazard under section 15 (15 U.S.C. 2064), or

(D) is an imminently hazardous consumer product under section 12 (15 U.S.C. 2061),

of the Consumer Product Safety Act;

(11) a fabric, related material, or product which does not comply with a flammability standard (other than one related to labeling) adopted under section 4 (15 U.S.C. 1193) of the Flammable Fabrics Act;

(12) a product which is a banned hazardous substance (including a children's article) under sections 2 and 3 (15 U.S.C. 1261 and 1262) of the Federal Hazardous Substances Act;

(13)(A) a pesticide which, on the basis of potential risks to human health or safety or to the environment,

(i) has been denied registration for all or most significant uses under section 3(c)(6) (7 U.S.C. 136a(c)(6)),

(ii) has been classified for restricted use under section 3(d)(1)(C) (7 U.S.C. 136a(d)(1)(C)),

(iii) has had its registration cancelled or suspended for all or most significant uses under section 6 (7 U.S.C. 136d),

(iv) has been proceeded against and seized under section 13(b)(3) (7 U.S.C. 136k), or

(v) has not had its registration cancelled, but requires an acknowledgement statement under section 17(a)(2) (7 U.S.C. 136o(a)(2)), of the Federal Insecticide, Fungicide, and Rodenticide Act, or

(B) a pesticide chemical for which a tolerance has been denied or repealed under section 408 (21 U.S.C. 346(a)) of the Federal Food, Drug, and Cosmetic Act; and

(14) a chemical substance or mixture—

(A) which is subject to an order or injunction issued under section 5(f)(3) (15 U.S.C. 2604(f)(3)),

(B) which is subject to a requirement issued under section 6(a)(1), 6(a)(2), 6(a)(5), or 6(a)(7) (15 U.S.C. 2605(a)(1), 2605(a)(2), 2605(a)(5), or 2605(a)(7)), or

(C) for which a civil action has been brought and relief granted under section 7 (15 U.S.C. 2606),

of the Toxic Substances Control Act.

Mr. GLENN. Mr. President, I rise to offer an amendment to S. 1848. This amendment is identical to S. 1380, the Hazardous Substance Export Notification Act of 1985. This legislation regularizes notification procedures currently required by law for the export of a hazardous product or substance. It also mandates prior notification of foreign officials, and provides a common format containing minimum information about the nature of the product and why it was banned or restricted in the United States. The second portion of the initiative requires the compilation of an annual compendium listing all final affirmative actions by U.S. agencies banning or severely restricting substances. Mr. President, before I proceed to discuss my amendment, I want to stress that I support the passage of S. 1848 and do not intend to obstruct its progress with this amendment or in any other way. My amendment adds no new regulation; it has no budgetary impact; and it does not affect the objectives or the implementation of S. 1848.

Exporting banned or severely restricted substances has often forced the Federal Government to consider the roles they play protecting health, safety, and the environment, and the promotion of U.S. trade and products. U.S. exports of these materials in 1984 were $22.3 billion while world chemical exports were estimated at over $150 billion. However, as the chemical manufacturing market has grown, U.N. statistics indicate that approximately 2 million persons in developing countries suffer acute pesticide poisoning annually. Thus, concern has increased that hazardous substances are exported to developing countries which lack the technical expertise, environmental infrastructure, and safety standards present in the industrialized, exporting nations.

The use or misuse of toxic materials poses serious environmental and health hazards which impair the long-term sustainability of resources, and can result in the deaths of thousands of people. The tragedy at Bhopal, India, where approximately 3,000 people died is a case in point of a situation that might have been avoided by providing good, sound, government-to-government information.

While both manufacturers and environmentalists have cooperated in their efforts to protect the reputation of the "Made in U.S.A." label throughout the world, and in some cases, have gone beyond statutory requirements, procedures must be established which alleviate the potential disasters which could occur without this information.

I want to point out that the problems cited above are not new. Several House committees have been following this issue for more than 10 years; and, in 1980, after 2½ years of very careful consideration, comment, and debate, the Carter administration signed an Executive order establishing a Federal policy on this issue designed to strengthen the position of the United States as a trading partner and to streamline and regularize existing regulations. The Carter order was rescinded 31 days after Ronald Reagan became President. He directed the Departments of Commerce and State to assess existing procedures and make recommendations. Their report was submitted to the Interagency Trade Policy Committee, chaired by the U.S. Trade Representative, which approved its implementation nearly 4 years ago. This amendment basically mirrors their recommendations.

Each of the six statutes regulating banned or severely restricted substances, as legislated by TSCA, FIFRA, FDA, and CPSC, provide an export notification scheme although they differ in manner of implementation and content. For example, under FIFRA, if there is an export of an unregistered pesticide the exporter must first receive an acknowledgment from the importer stating that the importer is aware of the product's unregistered status. After receiving the acknowledgment, the exporter provides it to EPA. EPA then notifies the State Department which in turn notifies a designated individual in the foreign government. This procedure completely differs from that of TSCA which EPA also administers. But, in contrast to

FIFRA, EPA notifies directly the foreign embassy located in the United States. Other agencies have entirely different notification procedures which they follow although the ends are the same—to provide information.

Mr. President, let me quote from a joint report which was sent from then Secretaries Baldridge and Haig to the U.S.T.R. Bill Brock, published in the International Environment Reporter. "The laws," the report said, "lack consistency with respect to the timing of notices, the information to be provided, and the method of transmission." And further, "there should be a consistent, uniform notification procedure." The report goes on to say that the United States should commit itself to providing information in a timely fashion to other nations when substances are severely restricted here or do not comply with specific safety requirements.

I believe, as do my colleagues Senators BUMPERS, INOUYE, and GORTON, that the United States has an obligation to inform the governments of those countries which lack sophisticated, technical knowledge about the potentially dangerous nature of these substances. A uniform and prior notification scheme, coupled with a compendium of U.S. banned or severely restricted substances, will be a first step in the direction of balancing trade considerations against environmental protection abroad.

Mr. President, under current law, export notification varies according to statute. For example, under FIFRA, the current law requires that the Department of State be notified of any hazardous shipment. Under TSCA, EPA notifies the importing country and the Department of State as well. Under those items covered by CPSC, the importing country is notified directly.

So what we have under these different regulatory bodies that control exports out of the United States is indeed four different reporting procedures.

This amendment is very simple. This amendment says that the manufacturers and members of industry will keep right on submitting their required paperwork to whatever the applicable regulatory agency. But at that point that Government agency would report directly to the Department of State, and the Department of State would represent and inform our Government to the foreign embassy located in the United States.

We also would have a further requirement for reporting any final regulatory actions taken on a banned or severely restricted substance goes through exactly the same channels.

So this amendment straightens out what right now is a morass of misunderstanding and curcuitous routes of reporting which foreign nations may find very confusing. The amendment makes one stop shopping, in other words, and simplifies the whole procedure.

We have a draft of a letter from the Commerce Department that basically approves of what I am doing here. We have addressed the proposals that they made in that draft letter. I think we have taken care of everyone's concerns. If this is acceptable to the floor managers of the bill, I do not think we need a record rollcall vote unless they would so desire.

Mr. President, I move the amendment as a substitute to what has been the pending amendment, and hope it can be accepted.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have to admit that the amendment is a very broad amendment. In the eyes of the distinguished Senator from Ohio, it is an important amendment. I know what he is trying to do. He is trying to consolidate the reporting, and make it more consistent. However, I have a feeling that there are a number of branches of Government which are going to be very upset with this amendment. I have not had nearly enough time to study it as I should have had. I am not finding fault with the distinguished Senator from Ohio. He has always been cooperative and we all know what a decent man he is.

I am inclined to accept the amendment but with this caveat: there may be some real hue and cry against this amendment from other sources. If we have to work on it in conference, perhaps I will be able to have the distinguished Senator work with me to try to accommodate his concerns of which I just presently do not have enough knowledge.

All I can do is ask him to exercise his good faith in working with us in conference to resolve any problems that may exist. I do know that this is a broadly drafted amendment. I know there is some concern by some agency people who would not like to have the amendment. But I am inclined to accept it, and go from there if the distinguished Senator will continue to work with me on it, as I need his help.

Mr. GLENN. Certainly. I appreciate very much the consideration of the distinguished floor manager. I would be glad to have it accepted on that basis because from what my staff has done we have found no objection to it. Some of the concerns of the Department of Commerce we have addressed. Some of the concerns of the senior Senator from Utah, Senator GARN, we have addressed.

Mr. HATCH. The Senator spoke with me, and told me that ordinarily he would probably oppose this, but knowing the senior Senator from Ohio he felt he wanted to go with the Senator. I feel the same way.

I might add that the Senator has tried to accommodate our concerns, and he made some changes in the amendment.

I have to be honest in expressing myself, and I do not know the ramifications of this amendment well enough to know whether it is going to cause a lot of problems or not.

I am inclined to accept it. The distinguished Senator has moved that it be accepted. I am inclined to go along with it.

□ 1740

Mr. President, I would be glad to have it accepted on the basis that we will continue to work together if there are complaints about this. I do not believe there will be, but I will be glad to work with the Senator from Utah if there are complaints.

Mr. METZENBAUM. Mr. President, I am very happy about the amendment of the senior Senator from Ohio. I think there are strong feelings. I believe he has provided a broader base for emphasis. In handling it through the State Department, my concern was that the embassies be notified in order that they would provide some protection or at least have knowledge about the subject that the products had been sent to those countries. I think this is a good amendment. I am happy to see that the Senator from Utah is prepared to accept it. Under those circumstances, Mr. President, I suggest we proceed.

Mr. GLENN. Mr. President, I ask unanimous consent that the distinguished Senator from Wisconsin [Mr. PROXMIRE] be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there further debate? If not, without objection, the amendment is agreed to.

The amendment (No. 1953), to amendment No. 1949, was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as amended.

Without objection, the amendment, as amended, is agreed to.

The amendment (No. 1949), as amended, was agreed to.

Mr. METZENBAUM. Mr. President, since the amendment of the distinguished senior Senator from Ohio was a substitute amendment, was that not

previously accepted to the amendment of this Senator from Ohio?

The PRESIDING OFFICER. The amendment of the distinguished Senator from Ohio was a substitute amendment for amendment No. 1949. The Senate still had to vote on amendment No. 1949 as amended by the substitute.

Mr. METZENBAUM. The question is whether the amendment, as amended, will be agreed to. Is that correct?

The PRESIDING OFFICER. The amendment, as amended, has been agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment, as amended, was agreed to.

Mr. GLENN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1954

(Purpose: To prohibit the shipment of a drug from the United States if the drug is found to be present in a country to which shipment is not authorized)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 1954.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 35, beginning with line 4, strike out through line 17 on page 37 and insert in lieu thereof the following:

"(8)(A) If at any time the Secretary or the Secretary of Agriculture determines, with respect to a drug which is authorized to be shipped under this subsection, that such drug is present in a country to which shipment is not authorized under this subsection, the Secretary or the Secretary of Agriculture, as the case may be, shall—

"(i) immediately prohibit the shipment of such drug from the United States to any country;

"(ii) give the person shipping the drug from the United States prompt notice of such determination and prohibition; and

"(iii) afford such person an opportunity for an expedited hearing.

Mr. METZENBAUM. Mr. President, this amendment simply states that if an unapproved drug is found in a Third World country the Secretary shall immediately halt the export of that drug. If the drug is in that Third World country and the Secretary learns about it, then he must immediately stop the further export of that drug.

This is the minimum that should occur if we are serious about enforcing any of the transshipment provisions of the bill.

The procedure proposed in the bill actually provides no real protection. The Secretary can immediately suspend export of an unapproved drug found in a Third World country only if the drug is found to pose an imminent hazard as defined under our food and drug laws. But, Mr. President, the imminent hazard standard is the most difficult to apply. It has only been used once in 20 years to pull a drug off the market in the United States.

Yet, since 1971, there have been over 7,000 drug recalls in this country. If this provision is used so rarely to recall a drug in the United States, how effective will it be in recalling a drug from a country thousands of miles away?

The proponents can argue there are other procedures in the bill to stop transshipment once it is discovered. The Secretary notifies the country as well as the U.S. company shipping the drug from our shores. Then the U.S. company has 14 days to issue a report to the Secretary on what it knows, if anything, about how their unapproved drug ended up in some far-off Third World country.

Then after 60 days if the drug is still being shipped to the Third World, the Secretary can prohibit export, but only if the drug falls under the rarely used imminent hazard criteria or if the U.S. company ships the drug to an importer knowing that the importer continues to ship the drug to a Third World country.

Mr. President, I want to say to the manager of the bill on the other side and to all others who may be interested that at the conclusion of my remarks in connection with this amendment, or at the conclusion of the remarks of the Senator from Utah, in case he wishes to be heard in connection with this matter, I will suggest that we enter into a unanimous-consent agreement that we vote tomorrow at 10 a.m. on this amendment.

Since I understand the procedure is to hotline this to the Members of both sides, I am advising those who are responsible for this kind of matter that it is my intent to make that suggestion.

Mr. HATCH. Will the Senator yield at that point?

Mr. METZENBAUM. I certainly will.

Mr. HATCH. As I understand the request, it is to vote at 10 a.m. tomorrow on this amendment.

Mr. METZENBAUM. I have not made that request at the moment because I believe the people on both sides of the aisles would probably want to clear that with the majority leader and the minority leader. I am not making it as a unanimous-consent request at the moment. I am merely indicating that when I conclude my remarks I intend to do that.

Mr. HATCH. The Labor Committee has a markup at 10 a.m. tomorrow morning.

Mr. METZENBAUM. I understood the chairman came to the floor to advise me that if it was necessary to do so, he would be prepared to set that hearing over to another day.

Mr. HATCH. We would rather not do that because there is a large agenda which the distinguished Senator from Ohio as well as others are concerned about, some of which he will oppose and some of which others will oppose.

Mr. METZENBAUM. We can discuss that further. A number of people have indicated that they wanted to get away this evening. I was trying to be accommodating in that connection. The Senator from Ohio has no great demands on his time in order to leave at a particular point, so we will just proceed and perhaps have a vote yet this evening.

You do not have to be a Philadelphia lawyer to know that the provisions which are presently in the law are unenforceable. Our own FDA has testified that such restrictions are illusory. In testimony before the Labor Committee on June 5, the Food and Drug Administrator stated, "I think that will be very difficult. Transshipment would be the responsibility of the country to which the first shipment is made."

In other words, we send the product to some other country and then the worry is what will happen when it gets to that other country. Will it be shipped to some Third World country?

So we asked the Food and Drug Administration were they in a position to give us assurances along that line and I just cited that they said it would be very difficult, and indeed it would be.

□ 1750

Mr. President, many European countries including France, England, Germany, Switzerland, et cetera, permit the export of unapproved drugs to the Third World. Now, that is a reality. Those countries and others as well do permit the export of unapproved drugs to the Third World.

Now, is there somebody who really believes that if they permit those drugs to be exported from their countries, they are somehow going to protect the drugs that we send over there? If they allow the practice, what interest will they have in ensuring that the United States unapproved drugs are not reexported? The problem is really one of enforcement as our own FDA again made clear in its June 5 testimony. Said they, "You include some kind of a provision in the legislation against transshipment, but I think once the exportation is made and the product is in the foreign country, you lose your ability to make the

requirement stick and you lose your ability to police."

What could be clearer? "Once the exportation is made and the product is in the foreign country," says the FDA, "you lose your ability to make the requirement stick and you lose your ability to police."

Now, the Pharmaceutical Association, which is the great supporter of this bill, stated that they agree it would be difficult to enforce a prohibition against the transshipment of drugs." The GAO has documented our failure to control the reexport of computer and nuclear technology. If we cannot control the reexport of such vital technology, how can we hope to exert any real control over those unapproved drugs?

Mr. President, this whole issue of transshipment points to the weakness of the so-called protections in this bill. The real issue is that this bill is going to make it possible to export drugs and transship them throughout the world. This amendment will not keep that from happening but it will say that once we learn about it, there will be no further exports.

Oh, the pharmaceutical manufacturers, even though they recognize there is no way of protecting the transshipment of those drugs, will not support this amendment. So if you are voting with the Pharmaceutical Manufacturers Association, vote this amendment down, because they do not want it. We are supposed to believe that if we have 15 countries in a bill declare they have adequate FDA's, oh, we are as we sit here this afternoon that each of those countries has an adequate FDA. Come on. Who are you kidding? We do not know that at all. We know they have nice names and we like those names, and they are respected countries and they speak the language well and they are cultured. But that does not mean they have adequate FDA's. But we are saying we can go ahead and export drugs not approved for use by our own citizens and send them to those countries which do not prohibit the exporting of their own drugs, we can be confident they are going to protect us and see to it that our drugs are not transshipped. I believe we better think again. There are a lot of countries to which unapproved drugs can be exported, and we are not going to know what we shipped over and where it finally wound up.

Oh, yes, we will know sometime. I forgot. We will know when there is a tragedy. We will know when there is an outbreak of illness. We will know when there are some deaths and they say "We thought it was all right because it says here that it is made in America. And if it is made in America, it is supposed to be safe." But it will not be safe because there will not be one American in 230 million who will know whether it is safe or not safe.

Now, in addition to the 15 countries that are listed, the Secretary of Health and Human Services has the right under this legislation to add some more countries. Let me give you the names of some major lobbyists that can probably help you get your country listed. The countries of the world ought to understand who has influence and who works for what fee. And I am certain that if this bill becomes law some of those major lobbyists will be back here saying to HHS "Add this country, add that country." Can you really believe the Secretary of HHS is going to say no?

There were seven countries that were proposed as part of a suggested agreement over in the House already, and I say on the floor of the Senate that I do not believe those seven countries can provide that kind of protection, nor do I believe their FDA's can be compared to ours. But a drug cannot be exported to these second-tier countries unless they have first been approved by 1 of the 15 tier 1 countries. OK, big deal. One of the 15 tier 1 countries says OK. Then the Secretary of HHS permits the sale to go to any one of a number of other countries.

This approach of saying that if 1 of those other 15 countries says it is OK really permits one country to decide our drug export standards. Mr. President, that is risky business.

On October 11, 1985, the French Government pulled the arthritis drug Isoxicam off the market. It was linked to five deaths and an undetermined number of injuries. The drug was not approved by the FDA for use in our country. We have our own strict standards to thank for that. However, under S. 1848, the Hatch-Kennedy bill, this drug could have been manufactured in the United States and shipped all over the world with a "Made in America" label.

England, another country on the approved list, has pulled six drugs off the market over the last 2 years which it had earlier approved. These six drugs were approved in the United Kingdom and withdrawn outright. These are drugs which have been linked to severe reactions and deaths. Osmosin was linked to 15 deaths and Flenac was linked to 15,000 adverse reactions and an undetermined number of deaths. None of these drugs were approved for use in the United States. However, under S. 1848, these killer drugs could have been shipped all over the world and we could stand so proud that we would have the "Made in America" label.

Mr. President, it is absurd for Congress to list 15 countries in this bill and claim that we know they have adequate drug approval authority. Is there anybody in the Senate who is in a position to say whether 1 or all of those 15 countries have adequate drug approval authority? But if one of them approves the drug, then under this bill the drugs can be exported to the second-tier countries.

I asked the FDA Commissioner if he could list such countries, and his reply was:

> As stated in prior testimony, we would be most uncomfortable to be put in the position of having to make difficult, if not impossible, subjective judgments on the relative quality of drug regulatory authorities of other sovereign States.

In response to questions from the House side, the agency was even more adamant. Said they:

> Such a list cannot be provided because of difficulties in evaluating the stated criteria such as attempting to determine whether prescription drug labeling information is accurately conveyed to physicians and pharmacists in various countries.

(Mr. HECHT assumed the chair.)

□ 1800

Mr. METEZENBAUM. Mr. President, I read a response to a question on the House side that the FDA gave in connection with this issue:

> Such a list cannot be provided because of difficulties in evaluating the stated criteria such as attempting to determine whether prescription drug labeling information is accurately conveyed to physicians and pharmacists in various countries. Whether prescription drug information is also conveyed to patients depends on various countries' complex policies and practices regarding labeling for patients. With respect to adverse drug reactions, we do not have definitive information on most countries' formal requirements or agreements to obtain such data.
>
> Finally, to access a country's effectiveness in administering and enforcing its drug policies, a knowledge of actual daily operating procedures, as well as information on the qualifications, training, enthusiasm, skill, and knowledge the staff of the governmental authorities would be required. In short, no matter what legislative requirements are in place concerning approval or withdrawal of drugs, it is extremely difficult to access foreign regulatory decisions in the absence of information on how the regulatory system performs in practice.

So, Mr. President, our own FDA, with all the experience, with all the scientific expertise, with all the contact they would have with foreign drug regulatory authorities, says it is impossible to draw up a list of countries with adequate FDA. But we in the Senate are so wise, we have so many answers, that we are willing to list them; we are going to say which ones are going to protect the people of the world.

The supporters of this legislation say: "Yes, sir; wave that magic wand, and 15 countries appear on the adequate list."

I ask my colleagues in this body: If you knew that some drug had been approved by 1 of the 15 countries—I will not name them, but take any one; take the one that you think the least of, not the best of—and you knew it had

been approved by the FDA, or whatever they call it in that country, are you really sure you would be prepared to have your child or grandchild or wife use that drug? I doubt it very much. I know that I would not. There are some countries, yes. But from all those 15 countries? No. Loudly and clearly, no.

□ 1810

I again repeat that before this bill is concluded, there will be more than 15 countries on the list.

Is it not marvelous what we are saying here on the floor of the Senate in this legislation? Not only marvelous, I think it is mysterious. Not really. We know it is all a ruse. There is no science or safety concerns that are evident behind this list of 15 countries.

We think of those countries and we have some respect for them and we do business with them. So we say if their FDA approves it, that is good enough for us; then we can ship those drugs to all of those second tier countries.

There is only one, and only one, concern as to why we are passing this bill, why we are naming the 15 countries. Nobody in Congress made it up. The list came from the Pharmaceutical Manufacturers Association. It is their list, not the list of Congress. Let us not call it tier 1. Let us call it the PMA-approved list for unapproved drug exports.

It is a very dangerous game we are playing here, Mr. President. We are trying to create a legislative illusion. Let us pretend these 15 countries have FDA's just like our own. Let us pretend further that once the drug goes to England or France it will not end up in the Third World.

Mr. President, the Senate should not be under the illusion that the problem we face is a drug lag and that the drugs approved by the countries on the list will eventually be approved in the United States.

I have before me an analysis of the FDA study entitled "Compendium of New Drug Approvals in 11 Industrialized Countries, 1970 to 1983." The U.S. Food and Drug Administration put together the compendium in February of 1985.

The analysis details the percentage of drugs first approved in industrialized countries and then later approved in the United States.

Take Italy. It is now on the list of approved countries. But only 10 percent of the drugs first approved in Italy are later approved by the FDA for use in the United States.

Take Japan. Japan is supposed to be doing such a magnificent job in so many areas. But only 7 percent of the drugs first approved in Japan are later approved in the United States.

West Germany, with all of its scientific knowledge, only 20 percent of the drugs they approved first are cleared by our own FDA.

In France only 12 percent of the drugs first approved in France end up being approved in the United States.

Australia and Canada are in the 50 percent range; England and Sweden, 40 percent; and Switzerland, 29 percent.

So let us not kid ourselves. We have the strictest standards in the world and the standards of other countries vary widely. To throw them into a bill and say they have adequate FDA's is legislation by fantasy, not reality.

These drugs will end up in the Third World, and we would have allowed them to be made in America, simply because Italy, Japan, or France approved them first.

What I am saying is simple: The drugs that they are approving in other countries are not being approved in this country—7 percent of them, 12 percent of them, 20 percent of them. And yet what we are doing here in this bill is we are saying that if 1 of those 15 countries, and the countries I have already mentioned are part of that group of 15, if 1 of those group of 15 countries approved the drug, then it may be transshipped to one of the tier two countries.

Who cares if they are unlikely ever to be used in this country. Let us get them out on the market. Let us send them all over the world.

The best safeguard we could possibly offer the world is the one that is in place right now: If the drug is not safe enough or effective enough for the American people then do not export it.

Mr. President, that is the long and short of it. If a drug is not safe enough for the people of America, why in the world are we standing here today pushing legislation to make it possible to export it?

We not only will have mud on our face, I am afraid we will have blood on our face. I am afraid we will suffer the greatest embarrassment that this Nation has suffered in a long time.

Other nations are writing to us and saying "Please don't do that. Please don't, don't send us drugs that you won't use for your own people."

And we are saying "Don't tell us what to do. We are the strong and mighty and arrogant United States, and we are going to send you what we want, and if you don't like it, that's your tough luck."

We provide no real protection with the list of 15 countries. Once transshipment is accepted as a reality, then we are only opening the door to the dumping of potentially unsafe and ineffective drugs on the Third World.

Mr. President, my amendment is simple: It simply requires the Secretary to act, once the U.S.-unapproved drug export is discovered in the Third World. That is all there is in my amendment, nothing more, nothing less. He slams the door down and says no more of that drug will be exported once it is found to be transshipped to a Third World.

It is really the minimum we should do to protect people when these drugs are dumped in their countries.

Mr. HATCH. Mr. President, here again the Senator, through the imposition of an unreasonable restriction, wants to make this bill unusable. The amendment makes the mere presence of a drug in an unauthorized country a serious violation of the law, regardless of whether the exporter or his importer had any involvement at all in the movement of the drug to the unauthorized country. This is unfair. And no businessman in his right mind would subject himself to these penalties and the possible loss of the ability to export for events which are simply not under his control.

Instead, S. 1848, if so amended, would be used by no one. Drug companies would continue to build their facilities abroad and export their drugs free of such impractical restrictions as S. 1848 explicitly hinges civil and criminal penalties which we put in the bill upon the involvement of the manufacturer or its importer in unauthorized activities. It recognizes that it is impracticable for the U.S. Congress to try to govern independent downchain distribution of any drug.

I remind the Senator as he well knows that under S. 1848 the presence of an unapproved drug in an unauthorized country is a relatively unlikely, though not impossible, situation.

However, under current law, which he so oddly prefers, much to my consternation, the presence of unapproved drugs in developing countries is an everyday occurrence. That would stop.

Further, I remind him that drugs exported under this bill and finding their way to developing countries are unlikely to be unsafe drugs. This is because any drug exported under this bill will have first been approved for safety and effectiveness by the regulatory agency of a first-rank, developed country which has a drug approval process, equivalent to that of FDA.

Now, Mr. President, the thrust of S. 1848 really would be to penalize those who ship these products to unauthorized nations when they are subject to U.S. law. This bill does that. It is not the policy of the bill to penalize exporters who are not responsible for the shipment to an unauthorized nation or nations or more importantly to penalize patients. Yet that is the effect of the Senator's amendment. It would halt export shipments personally even though the exporter, the persons under the control of the exporter and the importer had committed no wrong.

If someone at the fourth or fifth level in the chain of distribution, perhaps even the patient, ships the drug in a substantial quantity to an unauthorized country, the Senator's amendment would penalize the exporter and patients, not the wrongdoer.

In some cases the Senator's amendment would prohibit the export of the drug if the drug was found in an unauthorized country, even though the drug was available from several sources. In fact, a drug which is found in an unauthorized country could have been made by a pharmaceutical manufacturer in that country, yet the Senator's amendment would still halt exports from the United States.

I think we would all agree with the intent of the Senator's amendment which is to punish those who ship these products to unauthorized countries. S. 1848 punishes those persons when they are subject to U.S. law and requires the exporter to change importers if the importer is not subject to U.S. law. We must be mindful, however, that these products may be lifesaving medications. When the exporter is not at fault, cutting off the supply of these drugs punishes the patients.

□ 1820

For this reason, I do not believe that Senator METZENBAUM's amendment protects public health, as is his intent. In fact, I know it does not. Rather, it may harm public health and place the Secretary in the untenable and possibly unethical position of having to deny life-saving medications to foreign patients.

The bottom line is really this: If production can be shut down because of the acts of a third person not under the manufacturer's control, no manufacturer will locate a plant here under this bill.

S. 1848 contains finely crafted provisions addressing transshipment. It does not proport to block any possible presence in unauthorized countries. It is simply not practical to try to control those drugs once they have left the control of the importer. However, this in no way detracts from the merit of this bill.

That is because if this bill does not pass, a particular unapproved drug may be manufactured overseas and exported to any country where it is legal. If the bill passes, the same unapproved drug may or may not find its way to the same countries, depending on the acts of subsequent actors in the purchase chain. However, the situation is not different under this scenario from that under current law. Current law is unable to prevent the presence in any country of any drug, since it simply leads to the production of unapproved drugs overseas. Therefore it makes no sense to criticize this bill because under some scenarios, the same thing could happen as happens now on a daily basis under current law.

Nor is the problem one of enforcement, as the Senator states. Statements of the Food and Drug Administration and the Pharmaceutical Manufacturers Association reflect the impracticality of our trying to control the trade in pharmaceuticals among downstream independent purchasers in foreign countries. Such a task would consume enormous resources and would not succeed, even if it were permitted by foreign governments. The Labor and Human Resources Committee recognized this, and instead imposed duties—and corresponding penalties—on exporters to take all measures on their control to ensure that neither they nor their importer are engaged in improper transshipment. However, we realized that it would be unfair, and would gutt the bill, if we attempted to impose these heavy penalties on manufacturers for conduct which was not beyond their control, all in a fruitless attempt to prevent a situation that occurs right now under the current law. I really cannot understand why the Senator prefers current law to the improvements of S. 1848. Certainly it is not because current law affords foreign consumers any protection.

Additional restrictions under S. 1848 occur in an imminent hazard situation. While it can normally be expected that drugs exported under these amendments and found in unauthorized countries will cause no harm there, having been already approved as safe and effective by at least one competent foreign agency. Additional export restriction may be imposed if the drug poses an imminent hazard to health in those countries.

These duties and restrictions were carefully considered by the committee and are enforcable by the appropriate agencies in contrast with the across-the-board prohibition which the Senator seems to feel appropriate, the responsibilities this bill would place upon the Department of Health and Human Services and the Department of Agriculture are quite managable. They are fully consistent with the statement by the Food and Drug Administration quoted in the Senator's minority views.

● Mr. LEVIN. Mr. President, I understand the intent of this amendment, and I sympathize with it.

However, the language of the amendment is overly broad. If we could identify the authorized country from which the drugs were transshipped to the unauthorized country, and if the drugs were found in the unauthorized country in significant quantities, and then I agree that we should halt the shipment of that drug to the authorized country itself.

However, under the language of this amendment, none of this drug could be shipped to any authorized country, even those authorized countries for which there was no proof that they were the source of the drugs transshipped to the unauthorized country, if the drugs were found in an unauthorized country. Further, according to this amendment, shipment to an authorized country would be halted if the drug was found in an unauthorized country, apparently regardless of the amount. These possible results under this amendment are too broad for me to be able to support it. ●

Mr. HATCH. Mr. President, adoption of this amendment would gut the bill, I do not think there is any question about that.

Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table. The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. ARMSTRONG], the Senator from Arizona [Mr. GOLDWATER], the Senator from Florida [Mrs. HAWKINS], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Oregon [Mr. PACKWOOD], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Vermont [Mr. STAFFORD] and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Mississippi [Mr. STENNIS] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 83, nays 8, as follows:

[Rollcall Vote No. 97 Leg.]

YEAS—83

Abdnor	Ford	McClure
Andrews	Garn	McConnell
Baucus	Glenn	Melcher
Bentsen	Gore	Mitchell
Bingaman	Gorton	Moynihan
Boren	Gramm	Murkowski
Boschwitz	Grassley	Nickles
Bradley	Hatch	Nunn
Bumpers	Hatfield	Pell
Burdick	Hecht	Pressler
Byrd	Heflin	Pryor
Chafee	Heinz	Quayle
Cochran	Helms	Riegle
Cohen	Hollings	Rockefeller
Cranston	Johnston	Roth
D'Amato	Kassebaum	Rudman
Danforth	Kasten	Sasser
DeConcini	Kennedy	Simon
Denton	Kerry	Simpson
Dixon	Lautenberg	Stevens
Dodd	Laxalt	Thurmond
Dole	Leahy	Trible
Domenici	Levin	Wallop
Durenberger	Long	Warner
Eagleton	Lugar	Weicker
East	Mathias	Wilson
Evans	Matsunaga	Zorinsky
Exon	Mattingly	

NAYS—8

Biden	Hart	Proxmire
Chiles	Inouye	Sarbanes
Harkin	Metzenbaum	

NOT VOTING—9

Armstrong	Humphrey	Stafford
Goldwater	Packwood	Stennis
Hawkins	Specter	Symms

So the motion to lay on the table amendment No. 1954 was agreed to.

□ 1840

Mr. HATCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. KENNEDY. Mr. President, I move to lay that on the table.

The motion to lay on the table was agreed to.

(The following occurred earlier and is printed at this point by unanimous consent:)

Mr. HATCH. Mr. President, will the distinguished Senator from Ohio yield?

Mr. METZENBAUM. I yield.

Mr. HATCH. To accommodate our colleagues, my arguments will be relatively short with respect to this amendment, even though it is a very important amendment. I suggest that we have one more vote tonight and then lay down another amendment and debate it and vote tomorrow morning at 10 o'clock, if that is what the Senator would like to do. That way, we would let our colleagues know where we are. It also would protect the Senator for one more amendment tonight.

Mr. METZENBAUM. One of the Senators on the other side of the aisle asked whether he could leave, whether there would be more votes, and I indicated that I might ask unanimous consent that the vote on this amendment be at 10 o'clock tomorrow.

Mr. HATCH. How many more amendments does the Senator have, after this one?

Mr. METZENBAUM. Maybe three or four.

Mr. HATCH. There is an objection on our side. I also feel badly because of the distinguished Senator on our side. I think he wanted to make sure when the vote would be tomorrow, although he would not like to miss votes tonight.

Mr. METZENBAUM. The Senator from Ohio is prepared to vote tonight, and he will stay here as long as the leadership wishes.

Mr. HATCH. Why do we not vote on this one tonight and lay down the next one?

Mr. METZENBAUM. Let me ask the majority leader: If there is an objection to voting, I suppose we could come in at 10 or earlier and get on the bill at 10 o'clock.

Mr. HATCH. I believe I understand why the objection occurred on our side. Why do we not vote tonight on this amendment, come in at 10 tomorrow, and start the next amendment?

Mr. METZENBAUM. If we come in at 10, we have morning business.

I say to the manager of the bill and the majority leader that Senator GORE has an amendment. I am not sure whether Senator SIMON has an amendment. The Senator from Ohio has three or four amendments. I am trying to be cooperative and have attempted to be all day. I am willing to work tonight, if the Senator wishes.

Since we have agreed to vote at 1 o'clock tomorrow, I do not want to get myself in a position where I am squeezed with respect to time.

Mr. HATCH. I am willing to make sure that the debates on our part are short and succinct. I believe we can get those amendments done if we start at 10 tomorrow and have this one amendment tonight.

Mr. METZENBAUM. I ask the majority leader a question: If it appears that the Senator from Ohio, who has attempted to be cooperative on Monday and Tuesday, is squeezed for time and it is necessary to get short additional time beyond 1 o'clock, would the majority leader have strong objection? At this moment I do not believe it would be necessary, but I want to have an opportunity to have my amendments voted upon after reasonable debate.

Mr. DOLE. I would be willing to extend the time until 2 o'clock instead of 1 o'clock.

Mr. METZENBAUM. I think that would be fine.

Mr. HATCH. Can the Senator let us know how many more amendments he has?

Mr. METZENBAUM. As the Senator from Utah knows, I intended to have an amendment having to do with giving notification to the embassies. The senior Senator from Ohio had an amendment that was found acceptable by the Senator from Utah, and I was willing to accept it as a substitute, and we did not have to take that to a rollcall vote.

Mr. HATCH. This is correct.

Mr. METZENBAUM. At this moment, I say that we probably do not have more than three, maybe four—but I do not think more than three—and I do not see any need for what I would call lengthy debate.

Mr. DOLE. I suggest that we come in early and be on the bill at 10 in the morning. We could have one additional rollcall vote this evening on the pending amendment, and we could alert our colleagues that this would be the last rollcall vote this evening. We could be back on the bill at 10 tomorrow.

I do not know whether any of these amendments will be acceptable. I do not know what the Gore amendment is or what the amendment of the Senator from Ohio are.

If that is satisfactory, we could alert our colleagues on both sides that there will be one additional vote this evening.

Mr. METZENBAUM. That is perfectly agreeable to the Senator from Ohio.

I say to the majority leader that if the majority leader is inclined to do so, to change the time for final passage to 2 p.m., or if he wants to wait until tomorrow, to see if we need that time, with the assumption that the majority leader will be able to get clearance, that would be satisfactory.

Mr. DOLE. I would be willing to make that request right now.

Mr. METZENBAUM. I think it would be helpful.

Mr. HATCH. I think so, too.

Mr. METZENBAUM. Would the majority leader want to make it not later than 2 p.m.? If we get done earlier, we can vote.

Mr. HATCH. How much longer will the Senator from Ohio be on this amendment? Then we can let our colleagues know.

Mr. METZENBAUM. I would need another 5 to 10 minutes for my remarks.

I say to the majority leader that I must clear the question of the change of time to vote with the minority leader. I ask the majority leader to withhold any action until I have had a chance to run that by the minority leader.

Mr. DOLE. I am perfectly willing to make that request, if the minority leader has cleared it, that the vote occur not later than 2 o'clock.

Is it safe for the majority leader and the minority leader to advise our colleagues that there will be one more vote this evening?

Mr. METZENBAUM. I think so.

Mr. DOLE. I thank the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the colloquy which just occurred be placed in the RECORD after the discussion in connection with this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

(Conclusion of earlier proceedings.)

Mr. HATCH. Mr. President, I do want to thank my colleagues for putting up with all of this debate today. I appreciate the support we have had on the floor thus far on this very important bill.

I also want to express my appreciation with regard to my colleague from Ohio. I know he is very sincere. I have always felt very deeply about people who feel so sincerely about matters such as he does. He is a very formidable opponent. There is no question about that. I feel very honored to be able to debate him from time to time. I have a deep friendship and regard for him.

As soon as Senator BYRD comes to the Chamber, we will wrap up the session for today.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1850

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

COSPONSORSHIP OF S. 2434

Mr. HATCH. Mr. President, yesterday I introduced the Cigarette Smoking Public Service Announcements Act of 1986, S. 2434. Unfortunately, Senator NICKLES' name did not appear as a cosponsor. I ask unanimous consent that Senator NICKLES be added to S. 2434 as an original cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE HOUSE

At 10:07 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 613. Joint resolution allowing qualified persons representing all the States to be naturalized on Ellis Island on July 3 or 4, 1986.

At 4:57 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Houses has passed the following bill, without amendment:

S. 2329. An act to make technical corrections in the higher education title of the Consolidated Omnibus Budget Reconciliation Act of 1985.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 1349) to reduce the costs of operating Presidential libraries, and for other purposes.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 124) entitled the "Safe Drinking Water Amendments of 1985."

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 974) to provide for protection and advocacy for mentally ill persons.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2224. An act to amend the Immigration and Nationality Act to permit nonimmigrant alien crewmen on fishing vessels to stop temporarily at ports in Guam; and

H.R. 4745. An act to amend title 18, United States Code, with respect to sexual abuse.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 2224. An act to amend the Immigration and Nationality Act to permit nonimmigrant alien crewmen on fishing vessels to stop temporarily at ports in Guam; to the Committee on the Judiciary.

H.R. 4745. An act to amend title 18, United States Code, with respect to sexual abuse; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The Committee on Commerce, Science, and Transportation was discharged from the further consideration of the following bill, which was placed on the calendar:

S. 1813. A bill to amend and extend the Atlantic Striped Bass Conservation Act, and for other purposes.

The following joint resolution was read the first and second times by unanimous consent, and referred as indicated:

H.J. Res. 613. Joint resolution allowing qualified persons representing all the States to be naturalized on Ellis Island on July 3 or 4, 1986.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3127. A communication from the Assistant Secretary of the Interior (Indian Affairs), transmitting, pursuant to law, the report on Indian education for fiscal years 1983 and 1984; to the Select Committee on Indian Affairs.

EC-3128. A communication from the Assistant Secretary of the Interior (Indian Affairs), transmitting, pursuant to law, a report on donations received and allocations made from the fund "Funds Contributed for the Advancement of the Indian Race"; to the Select Committee on Indian Affairs.

EC-3129. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar years 1984 and 1985; to the Committee on the Judiciary.

EC-3130. A communication from the Secretary of Commerce and the Attorney General of the United States, transmitting jointly, a draft of proposed legislation to encourage innovation, promote research and development, and stimulate trade by strengthening the protection given intellectual property rights by making necessary and appropriate amendments to the intellectual property rights laws; to the Committee on the Judiciary.

EC-3131. A communication from the Executive Director of the Pennsylvania Avenue Development Corporation, transmitting, pursuant to law, the annual report of the Corporation under the Freedom of Information Act for calendar year 1985; to the Committee on the Judiciary.

EC-3132. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report of the National Cancer Advisory Board for fiscal year 1985; to the Committee on Labor and Human Resources.

EC-3133. A communication from the Acting Archivist of the United States, transmitting, pursuant to law, a report on a plan for improving the management, maintenance, storage, and preservation of military records and improving public access to such records; to the Committee on Armed Services.

EC-3134. A communication from the Assistant Secretary of Energy (Conservation and Renewable Energy), transmitting, pursuant to law, a report on the first year activities of the Federal Methanol Fleet Program, dated March 1986; to the Committee on Energy and Natural Resources.

EC-3135. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the status of the Social Health Maintenance Organization Demonstration; to the Committee on Finance.

EC-3136. A communication from the Comptroller of the General Services Administration, transmitting, pursuant to law, the annual report on the Presidents Retirement System for fiscal year 1985; to the Committee on Governmental Affairs.

EC-3137. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on the reapportionment of certain funds for Radio Free Europe/Radio Liberty Inc.; to the Committee on Appropriations.

EC-3138. A communication from the Secretary of Commerce, transmitting, a draft of proposed legislation to repeal section 4 of the Fish and Wildlife Act of 1956, as amended, and for other purposes; to the Committee on Commerce, Science, and Transportation.

EC-3139. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on certain funds proposed for recission but for which the Congress did not pass a rescission bill; pursuant to the order of January 30, 1975, referred jointly to the Committee on Agriculture, Nutrition, and Forestry, the Committee on Appropriations, the Committee on Banking, Housing, and Urban Affairs, the Committee on the Budget, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, the Committee on Finance, the Committee on Foreign Relations, the Committee on Governmental Affairs, the Committee on the Judiciary, the Committee on Labor and Human Resources, and the Select Committee on Indian Affairs.

EC-3140. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Technical Risk Assessment—The Status of Current DOD Efforts"; to the Committee on Armed Services.

EC-3141. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "ADP Systems—Concerns About the

Acquisition Plan for DOD's Composite Health Care System"; to the Committee on Armed Services.

EC-3142. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, certain certifications with respect to the Space Defense and Operations (ASAT) program; to the Committee on Armed Services.

EC-3143. A communication from the Deputy Assistant Secretary of the Air Force (Logistics and Communications, transmitting, pursuant to law, a report on the conversion of the commissary shelf-stocking and custodial function at Scott Air Force Base, Illinois, to performance by contractor; to the Committee on Armed Service.

EC-3144. A communication from the Secretary of the Interior, transmitting, pursuant to law, the fourth biennial report on maximum attainable rates of production from significant fields on the Outer Continental Shelf; to the Committee on Energy and Natural Resources.

EC-3145. A communication from the Chairman of the Pennsylvania Avenue Development Corporation, transmitting, pursuant to law, the 1985 annual report of the Corporation; to the Committee on Energy and Natural Resources.

EC-3146. A communication from the Secretary of the Interior, transmitting, pursuant to law, a report on the current status of the helium program; to the Committee on Energy and Natural Resources.

EC-3147. A communication from the Administrator of General Services, transmitting, pursuant to law, a report on a proposed revision to a Privacy Act system of records; to the Committee on Governmental Affairs.

EC-3148. A communication from the Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed plan for the use and distribution of the AK-Chin, Salt River Pima-Maricopa, and Gila River Pima-Maricopa Indian communities judgement funds; to the Select Committee on Indian Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-680. A resolution adopted by the Senate of the Commonwealth of Puerto Rico, relating to the position of the President on the budget cuts of funds appropriated to the Land Grant Colleges; to the Committee on Appropriations.

"RESOLUTION

"To request the President of the United States, the Honorable Ronald Reagan to reconsider his position on the budget cuts, of funds appropriated to the Land Grant Colleges.

"STATEMENT OF MOTIVES

"On February 5, 1986, President Ronald Reagan sent the budget for the 1987 fiscal year to the Congress. In said budget, the appropriations for government programs of various agencies were cut. The Agricultural Programs Budget of the Land Grant Colleges in Teaching, Investigation and Extension Services was cut 59%. In Puerto Rico, this cut has a devastating effect on the funds and programs of the Agricultural Experiment Station and the Agricultural Extension Service. The local experiment station will lose 3.7 million dollars, which is equal to 49% of its federal budget.

"The Agricultural Extension Service of Puerto Rico is an agency where some 700 professional and clerical staff workers are employed. In addition, it has an unpaid volunteer corps of around 7,507 persons who serve actively.

"The proposed budget cuts would have a devastating effect on the nutrition, economy and education of the Puerto Rican people.

"The Agricultural Extension Service states four basic principles:

"1. the individual is supreme in democracy

"2. the home is the fundamental unit in civilization

"3. the family is the prime educational group of the human race

"4. the base of any permanent civilization must rest on man's relationship with the land

"These principles or objectives can be attained by implementing and developing a diverse educational program of great impact on Puerto Rican Society.

"*Be it resolved by the Senate of Puerto Rico:*

"Section 1. The President of the United States, the Honorable Ronald Reagan, is hereby requested to reconsider his position on the budget cuts of funds appropriated to Land Grant Colleges.

"Section 2. A copy of this Resolution, duly translated into English shall be sent to the President of the United States, to the Congress of the United States and to the news media for its diffusion and publication."

POM-681. A joint resolution adopted by the Legislature of the State of Illinois; to the Committee on Armed Services:

"SENATE JOINT RESOLUTION NO. 74

"Whereas, The Secretary of State of the United States recently released a list of twenty-two military bases which are slated for closure; and

"Whereas, Illinois appears to be the largest potential loser with the O'Hare Air Reserve Forces Facility and the Great Lakes Naval Training Complex as two installations selected; and

"Whereas, The economic impact on Illinois would be devastating and would involve 25,000 military personnel; a $250,000,000 payroll loss and installations with a book value exceeding two billion dollars; and

"Whereas, The elimination of these facilities would weaken the National defense system and would require years to rebuild to their present state of efficiency; and

"Whereas, The Secretary of Defense indicates that it will cost more than $1.11 billion to close Great Lakes alone, and 23 years to emortise this cost; and

"Whereas, The outlook for O'Hare presents the same problem with multiple 10,000-foot heavy duty runways which would be difficult at best to duplicate; and

"Whereas, This unreasonable assault on the treasury and the resultant injustice to the military units positioned in Illinois must be brought to a stop; therefore, be it

"Resolved, by the Senate of the eighty-fourth General Assembly of the State of Illinois, That we urge the Congress of the United States to take such steps as are necessary to maintain those military bases now present in the State of Illinois; and be it further

"Resolved, That a suitable copy of this preamble and resolution be presented to the Speaker of the House of Representatives and the President of the Senate of the United States Congress and to each member of the Illinois Congressional Delegation."

POM-682. A resolution adopted by the legislature of the State of Utah; to the Committee on Commerce, Science, and Transportation:

"TOBACCO-FREE SOCIETY RESOLUTION

"Be it resolved by the Legislature of the State of Utah

"Whereas, the Utah State Medical Association and the American Medical Association recently established the goal of creating a tobacco-free society by the year 2000;

"Whereas, the Utah State Medical Association and American Medical Association has called upon Congress to ban the advertising and promotion of cigarettes and smokeless tobacco;

"Whereas, a number of factors make it appropriate and even advisable for Congress to impose a ban on tobacco advertising;

"Whereas, smoking is the number one cause of preventable death in America;

"Whereas, even when used as intended, tobacco causes physical damage to the user;

"Whereas, there is substantial evidence that tobacco advertising is intended to create an atmosphere which makes children and teenagers want to start using tobacco; that is, the use of tobacco is made to appear glamorous and adult through advertising;

"Whereas, most smokers today begin smoking during their teens; 60% start smoking by the age of 13, and a total of 90% have begun smoking by the time they are 20;

"Whereas, it is obvious that many people start using tobacco even before they are old enough to buy it legally;

"Whereas, inasmuch as tobacco advertising encourages behavior that is contrary to the interest of public health, it is clearly in the interest of the Federal Government to prohibit it;

"Whereas, although the tobacco industry denies that their advertising is designed to induce people to use tobacco, it is unthinkable that the industry would spend billions of dollars a year on advertising and promotion merely to entice current users to change brands;

"Whereas, the combined effect on the tobacco market of smokers who die yearly from smoking-related causes (about 350,000 a year) and those who quit smoking (about 34 million in the last 20 years) requires that the tobacco industry recruit new smokers in order to remain a viable industry;

"Whereas, the use of smokeless tobacco is dangerous and can cause oral cancer; and

"Whereas, it is clearly imperative to protect impressionable teenagers from the hazards of smoking and other tobacco use by banning advertising which encourages it.

"Now, therefore, be it resolved, That the Legislature calls upon the Congress of the United States to ban tobacco advertising and promotion in order to achieve a tobacco-free society by the year 2000.

"Be it further resolved, That a copy of this resolution be prepared and sent to the President of the United States Senate, the Speaker of the United States House of Representatives, the chairman of the House Committee on Energy and Commerce, the chairman of the Senate Committee on Labor and Human Resources, the Surgeon General of the United States, the Secretary of Health and Human Services, the members of Utah's congressional delegation, and to the American Medical Association."

POM-683. A resolution adopted by the Legislature of the State of Utah; to the Committee on Energy and Natural Resources:

"URANIUM INDUSTRY RESOLUTION

"Be it resolved by the Legislature of the State of Utah, the Governor concurring therein:

"Whereas, uranium is used in the manufacture of weapons and in the generation of power through nuclear power plants;

"Whereas, the United States uranium mining and milling industry plays an indispensable role in guaranteeing the national security and energy independence of the United States;

"Whereas, the uranium industry in America has been devastated by the increased world mining of uranium and a complete halt in the building of nuclear power plants in America, to the point that the number of jobs in the industry has fallen from 22,000 to 2,000 in the last five years;

"Whereas, the uranium industry in the United States is in such terrible condition that U.S. Department of Energy Secretary John S. Herrington, in response to a charge from Congress to determine whether or not the industry remains viable, has issued a determination that the industry is no longer a viable one;

"Whereas, the uranium used in the United States today comes almost exclusively from foreign mines and mills; and

"Whereas, certain Utah communities that grew rapidly when uranium was a valuable commodity are now suffering terribly from the effects of the industry's crash.

"Now, therefore, be it resolved, That the Legislature of the State of Utah, the Governor concurring therein, supports action by the federal government to reestablish the viability of the domestic uranium industry in the United States.

"Be it further resolved, That the national security and energy independence of the United States be protected by legislation limiting the "dumping" of uranium by South Africa and Canada, which sell it to the United States at prices below those charged to domestic customers.

"Be it further resolved, That the uranium enrichment policies pursued by the United States Department of Energy be revised so that they do not detrimentally impact demand for United States uranium.

"Be it further resolved, That the United States Government fulfill its obligation to share the costs of reclamation of uranium tailings generated under old Atomic Energy Commission defense contracts, which costs were not reimbursed at the time solely because they were not recognized.

"Be it further resolved, That the stockpile of uranium concentrate now being held by the United States Department of Energy be retained to guarantee national security, or, if there is more than needed for that purpose, the stockpile be sold at no less than current fair market value.

"Be it further resolved, That the Congress of the United States provide an equitable financing mechanism which will insure an appropriate contribution by nuclear utilities for remaining clean-up costs.

"Be it further resolved, That a copy of this resolution be prepared and forwarded to the President of the United States, the Secretary of the United States Department of Energy, the members of Utah's congressional delegation, the presiding officers of each house of the United States Congress, and other members of Congress as designated by the sponsor."

POM-684. Joint resolution adopted by the Legislature of the State of California; to the Committee on Energy and Natural Resources:

"Whereas, On February 12, 1986, Secretary of the Interior Donald Hodel fired Lee Iacocca from his position as Chairman of the Statue of Liberty-Ellis Island Centennial Commission; and

"Whereas, Mr. Iacocca, who is the chief executive officer of the Chrysler Corporation, has headed the private fundraising effort for the restoration of the Statue of Liberty and Ellis Island, two of America's most significant shrines; and

"Whereas, Under Mr. Iacocca's leadership, a private foundation has raised more than $233,000,000 for the restoration project, already exceeding the goal which it had set; and

"Whereas, The firing of Mr. Iacocca comes just a few months before the Fourth of July Weekend, 1986, when four days of ceremonies will mark the 100th anniversary of the Statue of Liberty; and

"Whereas, Mr. Iacocca has stated he opposes a proposal, favored by certain officials in the Department of Interior, to commercialize Ellis Island through the construction of a conference center and hotel complex; and

"Whereas, Secretary Hodel has offered no convincing justification for the firing of Mr. Iacocca; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California requests that the Secretary of Interior immediately reinstate Lee Iacocca to the position of Chairman of the Statue of Liberty-Ellis Island Centennial Commission; and be it further

"Resolved, That the Legislature opposes any development project which would commercialize Ellis Island; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Secretary of the United States Department of Interior, the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-684. Resolutions adopted by the Legislature of the Palau National Congress; to the Committee on Energy and Natural Resources:

"RESOLUTION No. 2-0031-6

"Whereas, negotiation for the Compact of Free Association between the United States and the Republic of Palau has been going on for almost sixteen years now; and

"Whereas, on January 10, 1986, President Lazarus E. Salii of the Republic of Palau and Ambassador Fred M. Zeder of the United States signed the Compact of Free Association between the United States and the Republic of Palau signaling the beginning of a new political relationship; and

"Whereas, on January 23, 1986, the Second Olbiil Era Kelulau (Palau National Congress) overwhelmingly passed a legislation approving and ratifying the said Compact and setting February 21, 1986, as the Plebiscite day for all Palauan voters to freely choose their political status through election; and

"Whereas, prior to February 21, 1986, referendum, Ambassador Zeder and his staff officially announced the deeply desired exemption of the level of funds under the Compact of Free Association from the Gramm-Rudman-Hollings deficit reduction act; and

"Whereas, on February 21, 1986, a record of seventy-two percent (72%) of the Palauan voters approved the said Compact of Free Association; and

"Whereas, the voters of the Republic of Palau, realizing such exemption of Compact funding from Gramm-Rudman-Hollings deficit reduction act, voted among other positive reasons to overwhelmingly approve the Compact document; and

"Whereas, President Lazarus E. Salii certified the Plebiscite result on February 24, 1986, and has sent the approved Compact to President Ronald Reagan and the U.S. Congress for their respective approval; and

"Whereas, the House of Delegates of the Second Olbiil Era Kelulau is extremely concerned with the Gramm-Rudman-Hollings deficit reduction law as it may possibly reduce the Compact funds for the Republic of Palau; now, therefore, be it.

"Resolved that the House of Delegates of the Second Olbiil Era Kelulau, hereby respectfully requests the President of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States Congress to specifically exempt funds, for the compact of Free Association, from the Gramm-Rudman-Hollings deficit reduction law; and

"Be it further resolved that certified copies of this resolution be transmitted to the President of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States Congress, the President of the Senate and the Speaker of the House of Delegates of the Second Olbiil Era Kelulau, and the President of the Republic of Palau."

"HOUSE RESOLUTION No. 2-0033-6

"Whereas, on March 29, 1977, the Trust Territory Public Law No. 7-29, amended later by Public Law 7-30, created the College of Micronesia as a public corporation under its own Board of Regents; and

"Whereas, the said law incorporated into a single post-secondary educational system the Micronesian Occupational College and the Community College of Micronesia and its affiliated School of Nursing; and

"Whereas, Micronesian Occupational College was granted full accreditation by the Western Association of Schools and Colleges in 1977 and that such Accreditation Status was again reaffirmed in 1982; and

"Whereas, while the Micronesian Occupational College curricula are strongly Job-oriented, the mission of the College has been and still is to help students from the Federated states of Micronesia, and Republic of the Marshall Islands, and the Republic of Palau develop their potential in semi-professional and occupational areas; and

"Whereas, there are about one thousand five hundred Micronesian students who have graduated from the college; and

"Whereas, the Department of Interior (DOI) has been providing yearly grant to fund the operation of the Micronesian Occupational College since 1977; and

"Whereas, the yearly grant from the Department of Interior amounted to more than half of the yearly budget of the Micronesian Occupational College; and

"Whereas, such yearly grant from the Department of Interior to the Micronesian Occupational College is not specifically provided for in the Compact of Free Association between the Republic of Palau and the United States; and

"Whereas, the Department of Interior continued funding of the Micronesian Occupational College is not guaranteed under the Compact of Free Association; and

"Whereas, the future of the Micronesian Occupational College is substantially and unavoidably dependent on the continuation of the Department of Interior's funding grant; and

"Whereas, it is in the best interest of the Micronesian Islands governments that Micronesian Occuptional College continue its educational services to the islands community; now, therefore, be it

"Resolved that the House of Delegates of the Second Olbiil Era Kelulau, hereby respectfully requests the President of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States Congress to continue funding of the specific grant, from the Department of Interior, for operation of the Micronesian Occupational College in the Republic of Palau; and

"Be it further resolved that certified copies of this resolution be transmitted to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives of the United States Congress, the President of the Federated States of Micronesia, the President of the Republic of the Marshall Islands, the President of the Senate and the Speaker of the House Delegates of the Second Olbiil Era Kelulau, and the President of the Republic of Palau."

POM-686. Resolution adopted by Community School District No. 201, Westmont, IL, opposing certain provisions of H.R. 3838; to the Committee on Finance.

POM-687. Resolution adopted by the Board of Education of La Salle Public Elementary Schools, District 122, La Salle, IL, opposing certain provisions of H.R. 3838; to the Committee on Finance.

POM-688. Resolution adopted by the Board of Education of Forest Ridge School District No. 142, Oak Forest, IL, opposing certain provisions of H.R. 3838; to the Committee on Finance.

POM-689. Joint resolution adopted by the Legislature of the State of Connecticut; to the Committee on Finance.

"RESOLUTION

"Whereas, Connecticut was the first state in the nation to begin operating an enterprise zone program; and

"Whereas, Connecticut's enterprise zone program has been very successful in promoting economic development, job creation and the revitalization of inner-city areas; and

"Whereas, Congress is currently considering federal enterprise zone legislation; and

"Whereas, state enterprise zones would be far more successful if such federal legislation were enacted, due to the greater impact of federal tax and regulatory incentives that would be available under such legislation; and

"Whereas, the two largest organizations of elected officials, the National League of Cities and the U.S. Conference of Mayors, as well as business and job training organizations, have endorsed proposed federal enterprise zone legislation, now therefore, be it

Resolved, that this general assembly calls upon the Congress of the United States to enact enterprise zone legislation,

"Be it further resolved, that copies of this resolution be sent to the speaker and the Clerk of the United States House of Representatives, the President and the Secretary of the United States Senate, and to each member of the Connecticut Congressional delegation."

POM-690. Joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Foreign Relations:

"HOUSE JOINT RESOLUTION No. 1014

"Whereas, In signing the 1975 Helsinki Accords the Soviet Union promised to respect human rights and fundamental freedoms including the freedoms of thought, conscience, religion, and belief, and to promote and encourage the effective exercise of civil and political rights; and

"Whereas, The Soviet Union, instead of keeping its word, systematically violates the Helsinki Accords by sending Soviet citizens to forced labor camps and psychiatric hospitals for merely trying to discuss their government's nuclear weapons policy and United States-Soviet relations in a meaninful way; and

"Whereas, Soviet human rights violations allow the Soviet government to dictate arms policies without facing opposing political pressure from their citizens; and

"Whereas, Human rights and peace are the same issue and bilateral pressure on the Soviet government from its own citizens would make successful negotiations more likely; and

"Whereas, Courageous people in the Soviet Union endure cruel repression and prison for their activities; now, therefore,

"Be it Resolved by the House of Representatives of the Fifty-fifth General Assembly of the State of Colorado, the Senate concurring herein:

"That the General Assembly of Colorado urges the Governor of Colorado to send a communication to the President of the United States and the General Secretary of the Communist Party of the Soviet Union stating as follows:

"The risk of nuclear war between the United States and the Soviet Union can be reduced if all people have the ability to express their opinions on world issues, including their nations' arms policies, freely and without fear; therefore, the General Assembly of the state of Colorado urges all nations that signed the Helsinki International Accords on Human Rights to observe the Accords' provisions of freedom of speech, religion, press, assembly, and emigration for all their citizens.

"Be It Further Resolved, That the Chief Clerk of the House of Representatives transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Colorado delegation to the Congress of the United States in order that they may be apprised of the sense of the Colorado General Assembly."

POM-691. A resolution adopted by the Mayor and Council of the Borough of Brielle, New Jersey favoring a constitutional convention for purposes of proposing an amendment to the Constitution relative to taxation; to the Committee on the Judiciary.

POM-692. A resolution adopted by the Township Council of Delran, New Jersey, favoring a constitutional convention for purposes of proposing an amendment to the Constitution relative to taxation; to the Committee on the Judiciary.

POM-693. A resolution adopted by the City Council of South Euclid, Ohio favoring legislation to proclaim June 21, 1986, as Save American Industry/Jobs Day; to the Committee on the Judiciary.

POM-694. A resolution adopted by the Lorain County, Ohio AFL-CIO Federation of Labor, favoring designation of June 21, 1986 as Save American Industry/Jobs Day; to the Committee on the Judiciary.

POM-695. A resolution adopted by the Senate of the Legislature of the State of Hawaii; to the Committee on Labor and Human Resources.

"SENATE RESOLUTION No. 7

"Whereas, there are two chapters of federal law which apply to persons injured in the course of maritime employment; and

"Whereas, the Longshoremen's and Harbor Worker's Compensation Act affords quick monetary compensation to all injured maritime workers except members of the crew and masters, while the Jones Act covers these two categories; and

"Whereas, the two pieces of legislation appear to be mutually exclusive, in that workers covered under the Jones Act do not have access to the remedies available under the Longshoremen's and Harbor Worker's Compensation Act; and

"Whereas, rising insurance rates for commercial fishers who are subject to the Jones Act have increased costs and slowed expansion in this vital industry; and

"Whereas, the Jones Act, unlike the Longshoremen's and Harbor Worker's Compensation Act, has no provision rendering inoperative state laws which create parallel remedies such as workers' compensation; now, therefore,

"Be It Resolved by the Senate of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1986, that the Legislature requests the United States Congress to amend the Jones Act to exclude commercial fishers and amend the Longshoremen's and Harbor Worker's Compensation Act to include commercial fishers; and

"Be It Further Resolved that certified copies of this Resolution be transmitted to the Speaker of the United States House of Representatives, the President of the United States Senate and to each member of Hawaii's congressional delegation."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary:

Report to accompany the bill (S. 1655) to amend the Unfair Competition Act of 1916 and the Clayton Act to provide for private enforcement of the Unfair Competition Statute in the event of unfair foreign competition, and to amend title 28 of the United States Code to provide for private enforcement of the Customs Fraud Statute (Rept. No. 99-295).

By Mr. STAFFORD, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 1965. A bill to reauthorize and revise the Higher Education Act of 1965, and for other purposes (with additional views) Rept. No. 99-296).

By Mr. HATCH, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 881. A bill to extend title X of the Public Health Service Act for 3 years (Rept. No. 99-297).

By Mr. HATCH, from the Committee on Labor and Human Resources, with amendments:

S. 1566. A bill to extend the Family Life Demonstration Program for 3 years (Rept. No. 99-298).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. GOLDWATER, from the Committee on Armed Services:

Mr. GOLDWATER. Mr. President, from the Committee on Armed Services, I report favorably the attached listing of nominations.

Those identified with a single asterisk (*) are to be placed on the Executive Calendar. Those identified with a double asterisk (**) are to lie on the Secretary's desk for the information of any Senator since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of April 24, 1986, at the end of the Senate proceedings.)

*1. In the Marine Corps there are 11 promotions to the grade of brigadier general (list begins with James E. Sniffen). (Ref. No. 1011)

**2. In the Air National Guard there are 48 promotions to the grade of lieutenant colonel and below (list begins with Archie D. Barnes). (Ref. No. 1035)

Total: 59.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BUMPERS:

S. 2439. A bill to amend the Act of February 25, 1920, to provide for competitive leasing of oil and gas for onshore Federal lands, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. McCONNELL (for himself and Mr. THURMOND):

S. 2440. A bill to amend the Federal Tort Claims Act to include reasonable limitations on the tort liability of the United States; to the Committee on the Judiciary.

By Mr. McCONNELL (for himself and Mr. THURMOND):

S. 2441. A bill to place limitations on the civil liability of Government Contractors to ensure that such liability does not impede the ability of the United States to procure necessary goods and services; to the Committee on the Judiciary.

By Mr. DeCONCINI (for himself and Mr. GOLDWATER):

S. 2442. A bill to establish the San Pedro Riparian National Conservation Area in Cochise County, AZ, in order to assure the protection of the riparian, wildlife, archaeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DOLE (for Mrs. HAWKINS (for herself and Mr. HATCH)):

S. 2443. A bill to amend the Public Health Service Act to revise the authorities of, and redesignate, the Alcohol, Drug Abuse, and Mental Health Administration; to the Committee on Labor and Human Resources.

By Mr. STAFFORD (for Mrs. HAWKINS (for herself, Mr. STAFFORD, Mr. HATCH, Mr. DODD, Mr. KENNEDY, Mr. CHAFEE, Mr. KERRY, Mr. WEICKER, Mr. PELL, Mr. RIEGLE, Mr. SIMON, Mr. BYRD, Mr. ANDREWS, and Mr. GRASSLEY)):

S. 2444. A bill to reauthorize the Head Start Act, the Low-Income Home Energy Assistance Act of 1981, the Community Services Block Grant Act, the dependent care State grant program, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. MURKOWSKI (for himself, Mr. SIMPSON and Mr. THURMOND):

S. 2445. A bill to amend title 38, United States Code, to improve certain Veterans' Administration health-care programs; to the Committee on Veterans Affairs.

By Mr. CHAFEE (for himself, Mr. STAFFORD, Mr. GORE, Mr. HEINZ, Mr. METZENBAUM, and Mr. LEVIN):

S. 2446. A bill to require the Secretaries of Agriculture and Health and Human Services to enforce certain food labeling requirements for packaged foods sold by certain restaurants; to the Committee on Governmental Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and State resolutions were read, and referred (or acted upon), as indicated:

By Mr. LAUTENBERG (for himself and Mr. HOLLINGS):

S. Res. 405. Resolution to express the sense of the Senate opposing the imposition of a federal licensing fee for marine sportfishing; to the Committee on Commerce, Science, and Transportation.

By Mr. DODD (for himself and Mr. WEICKER):

S. Res. 406. Resolution honoring the 125th anniversary of organized camping in the United States; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BUMPERS:

S. 2439. A bill to amend the Act of February 25, 1920, to provide for competitive leasing of oil and gas for onshore Federal lands, and for other purposes; to the Committee on Energy and Natural Resources.

(The remarks of Mr. BUMPERS and the text of the legislation appear earlier in today's RECORD.)

By Mr. McCONNELL (for himself and Mr. THURMOND):

S. 2440. A bill to amend the Federal Tort Claims Act to include reasonable limitations on the tort liability of the United States; to the Committee on the Judiciary.

S. 2441. A bill to place limitations on the civil liability of Government contractors to ensure that such liability does not impede the ability of the United States to procure necessary goods and services; to the Committee on the Judiciary.

(The remarks of Mr. McCONNELL and Mr. THURMOND and the text of the legislation appear earlier in today's RECORD.)

By Mr. DeCONCINI (for himself and Mr. GOLDWATER):

S. 2442. A bill to establish the San Pedro Riparian National Conservation Area in Cochise County, Arizona, in order to assure the protection of the riparian, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area, and for other purposes; to the Committee on Energy and National Resources.

SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA

Mr. DeCONCINI. Mr. President, it gives me great pleasure to introduce legislation today that will establish special protection for a unique riparian ecosystem in southern Arizona known as the San Pedro Riparian Area. Lands along a 31-mile stretch of the San Pedro River in western Cochise County, AZ, comprise some of the most valued riparian, wildlife, archaeological, paleontological, scientific, cultural, and recreational resources in the Southwest. Intense national interest in this area sparked action by the Bureau of Land Management to acquire riparian lands along the San Pedro. On March 7 of this year, title to these lands was turned over to the Bureau of Land Management through a land exchange initiative with the private owner, Tenneco Inc. Since that time, the BLM has closed the 43,371 acres of land to the public while it formulates an interim land management policy for these important public lands.

The legislation I am sponsoring today, with my good friend from Arizona, Senator GOLDWATER, will place the San Pedro Riparian Area under the management of a National Conservation Area of the Bureau of Land Management. The lands will be managed to protect the fragile resource values but will be open to the public for recreation and uses on a controlled basis.

Mr. President, last year numerous individuals and organizations came to me seeking Land and Water Conservation Funds to acquire the lands now comprising the San Pedro River Riparian Area. At that time, estimates on the cost to acquire this area ranged from $20 to $30 million. Through the initiative of the Bureau of Land Management, the Federal Government now owns these lands and can manage

them to protect the resources and assure public enjoyment for the years to come. I commend the BLM for its foresight and leadership in acquiring and protecting these lands. In times when all of us are gravely concerned about spiraling Federal deficits, it is good to see actions undertaken that respond to our public land needs without deepening the Federal budgetary problems. Dean Bibles, the Arizona State Director, for the BLM, is largely responsible for this achievement and deserves substantial credit.

The 43,371 acres of land along the San Pedro River are rich in wildlife and significant cultural resources. The area provides habitat to the largest diversity of reptiles, birds, and mammals found in the United States and North America. Mexican birds, whose northern range is southeastern Arizona, use the area and species like the Harris hawk, the black hawk, the zone-tailed hawk, gray hawk, aplomado falcon, and the elegant trogon are prevalent. Experts estimate that the area includes 161 species of birds, 80 species of mammals, a dozen fish species, and about 68 species of reptiles and amphibians.

Equally important are the abundance of cultural and historic resources found in the area. There are 110 known archaeological sites including the famous and highly significant Paleo Indian sites dating to 11,000 years ago, the Presido of Santa Cruz de Terrante (Quiburi), Murray Springs, and the Escapule site. This is one of the few areas within the United States where known sites of the period between the prehistoric and historic occupation of the Southwest still exist. While many of these sites must be carefully preserved, they do afford excellent opportunities for interpretation and education for the public.

While the Bureau of Land Management has existing authority under the Federal Land Policy and Management Act of 1976 to manage these lands, because of the fragile nature of the significant resources and the need to ensure the proper protection and use of the area for the years to come, I believe special consideration should be afforded this area by the designation of the San Pedro Riparian Area as a National Conservation Area. Under the legislation I propose today, the San Pedro lands will be managed primarily to conserve and protect the riparian, wildlife, archaeological, paleontological, scientific, cultural, educational, and recreation resources of the area. None of the lands will be eligible for disposal and the Secretary will be directed to work with the public to develop a long-term management policy for the National Conservation Area. The Secretary shall have the authority to enter into cooperative agreements with State and local agencies like the Arizona Game and Fish Department, Arizona State Parks and private organizations who may have special management expertise and concern for the preservation of the area. Subject to valid existing rights, the area will be withdrawn from mineral entry. Because of the environmental importance of this area, a multiple-use advisory council will be established to advise and recommend to the Secretary of the Interior the appropriate practices for the development and implementation of the management plan for this area. Also, because there have been concerns about the BLM's ability to sufficiently manage and protect this area under the designation of a National Conservation Area, I have included a provision which requires the Secretary of the Interior to submit a report to the appropriate committees of the House and the Senate within 5 years of the date of enactment of the act and every 10 years thereafter, on the implementation of the terms of the act. That report is to include a detailed statement on the condition of the resources and the BLM's ability to achieve the management objectives outlined in the bill.

Mr. President, through the initiative taken by Dean Bibles of the BLM and through the permanent management authority offered to the San Pedro area in this legislation, a unique area of diverse resources, breathtaking beauty, and historic values will be preserved and protected for all Americans to enjoy for the years to come. The cooperation and continued work by experts and citizens in Arizona, working with the BLM, will assure this goal.

In order to adopt a permanent management plan for this important area this year, it is my hope that the Energy and Natural Resources Committee will take expeditious action on this measure.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2442

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT OF CONSERVATION AREA.

(a) ESTABLISHMENT.—(1) There is hereby established the San Pedro Riparian National Conservation Area (in this Act referred to as the "conservation area").

(2) The conservation area shall—

(A) consist of Federal lands acquired by exchange or purchase; and

(B) be managed by the Secretary of the Interior, acting through the Bureau of Land Management, (in this Act referred to as the "Secretary") in accordance with the provisions of this Act.

(3) The conservation area shall not cover more than 60,000 acres.

(b) BOUNDARIES.—Lands to be included in the conservation area are generally depicted on a map entitled "Boundary Map, San Pedro Riparian National Conservation Area", and 51 Fed. Reg. 8715, which together with a legal description, ref. A21410, shall be on file and available for public inspection in the offices of the Secretary of the Interior, Washington, DC, and in appropriate State and local offices of the Bureau of Land Management in the State of Arizona. The Secretary shall finalize the boundaries of the conservation area no later than 5 years after the date of enactment of this Act.

SEC. 2. MANAGEMENT OF CONSERVATION AREA.

(a) MANAGEMENT.—The Secretary shall manage the conservation area—

(1) in accordance with the provisions of this Act, and where not inconsistent with the provisions of this Act, the principles of the Federal Land Policy and Management Act of 1976 (43 U.S.C., 1701 et seq.); and

(2) in a manner that conserves, protects, and enhances the riparian, wildlife, archaeological, paleontological, scientific, cultural, educational, and recreation resources of the conservation area.

(b) OTHER USES.—The Secretary may allow uses other than those specified in subsection (a) if he can show that such uses will have no significant adverse effects on the primary purposes for which the conservation area is established.

(c) NO DISPOSITION OF LANDS WITHIN CONSERVATION AREA.—Notwithstanding any other provision of law, lands within the conservation area shall not be available for disposition, except through exchange to improve boundaries.

SEC. 3. MANAGEMENT PLAN.

(a) DEVELOPMENT OF PLAN.—No later than two years after the date of enactment of this Act, the Secretary shall develop a plan for the comprehensive and long-term management, development, and protection of the conservation area. The plan shall be developed with full opportunity for public participation and comment, and shall contain provisions designed to assure protection of the riparian, wildlife, archaeological, paleontological, scientific, cultural, and recreation resources and values of the conservation area.

(b) USE OF CONSERVATION AREA.—The plan developed pursuant to subsection (a) shall generally provide for visitor use of the conservation area. Notwithstanding the preceding sentence, the Secretary may limit visitor use, close portions of the conservation area to public use, or allow use of the conservation area by permit only (to be issued by him with appropriate conditions) in order to insure protection of the conservation area's resources and values and provided in this Act.

(c) RESEARCH IN CONSERVATION AREA.—In order to assist in the development of appropriate management strategies for the conservation area, the Secretary may authorize research on matters including the environmental, biological, hydrological, and cultural resources in the conservation area.

(d) PRIVATE MANAGEMENT.—The Secretary may enter into cooperative agreements with appropriate State and local agencies or private organizations for the management of any portion of the conservation area in accordance with land use plans for the conservation area developed pursuant to the provisions of this Act.

SEC. 4. MULTIPLE USE ADVISORY COUNCIL.

The Secretary of the Interior shall establish a Multiple Use Advisory Council which shall advise and recommend to the Secretary appropriate management practices to

implement the provisions of the land use plan and the purposes of this Act. The members of the council shall be appointed by the Secretary and shall include representatives from Cochise County.

SEC. 5. GENERAL PROVISIONS.

(a) WITHDRAW FROM MINING.—Subject to valid existing rights, the lands described in section 1 are hereby withdrawn from all forms of appropriation under the public land laws, including mining and mineral leasing laws and the Geothermal Leasing Act.

(b) REGULATIONS.—The Secretary is authorized to issue regulations necessary to implement the provisions of this Act.

(c) VIOLATIONS OF ACT.—Any person who violates any provision of this Act or other regulations issued by the Secretary to implement this Act shall be subject to a fine of up to $10,000, or to imprisonment for up to one year, or both.

(d) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with appropriate State and local agencies for enforcement of the provisions of this Act and regulations issued pursuant to it.

(e) ENDANGERED SPECIES ACT.—Nothing in this Act shall supersede or otherwise affect the Endangered Species Act of 1973 (16 U.S.C. 1530 et seq.).

(f) ACQUISITION OF LANDS.—Nothing in this Act shall affect State or private inholdings within the boundaries of the conservation area as described by the Secretary except as they may be acquired by exchange or purchase but not by condemnation.

SEC. 6. REPORT TO CONGRESS.

No later than 5 years after the date of enactment of this Act and every 10 years thereafter, the Secretary shall furnish to the appropriate committees of the House of Representatives and the Senate, a report on the implementation of this Act. Such report shall include a detailed statement on the condition of the resources within the conservation area and the Bureau of Land Management's ability to achieve the management goals specified under this Act.

SEC. 7. AUTHORIZATION.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

By Mr. DOLE (for Mrs. HAWKINS, for herself and Mr. HATCH):

S. 2443. A bill to amend the Public Health Service Act to revise the authorities of, and redesignate, the Alcohol, Drug Abuse, and Mental Health Administration; to the Committee on Labor and Human Resources.

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH AMENDMENTS

(Mr. DOLE submitted the following statement on behalf of Mrs. HAWKINS.)

● Mrs. HAWKINS. Mr. President, today, I am introducing with my colleague from Utah, Senator HATCH, legislation reauthorizing the National Institute on Alcohol Abuse and Alcoholism [NIAAA] and the National Institute on Drug Abuse [NIDA].

This bill seeks to reauthorize these Institutes for 5 years. Funding for the fiscal year 1987: NIDA, $83 million and NIAAA, $69 million. Such sums as would be necessary would be authorized each year thereafter.

TEENAGE SUICIDE

In the area of prevention, this bill would require triannual prevention reports. It would also ask the Secretary to present a report to Congress in January 1988 and every 3 years thereafter on suicide among young people. The report on teen suicide would be overseen by the Secretary and the Secretary's Task Force on Youth Suicide and would be coordinated throughout the Department of Health and Human Services.

Mr. President, in our Nation today, the life expectancy of every age group is up. Those of us who are lucky will live well beyond our 80 birthdays. But tragically, there is one age group where this is not the case—young people, 15 to 24. An alarming veil of despair seems to have gripped many in this most vulnerable and precious age group and they are succumbing as never before. We need to know what it is that is driving this tragic increase in teenage suicide if we are to stop it. And stop it we must because these young people are the leaders of tomorrow.

NAME CHANGE FOR ADAMHA

Currently, the National Institute on Alcohol Abuse and Alcoholism and the National Institute on Drug Abuse and the National Institute on Mental Health, represent the premiere substance abuse research efforts in this country. Because the function of these Institutes is primarily for research purposes, this legislation recommends that a title change for the Alcohol, Drug Abuse and Mental Health Administration [ADAMHA] which currently administers these Institutes. Should this provision be enacted, ADAMHA would be become the National Institutes on Alcohol, Drugs, and Mental Health. This would in no way change the current jurisdiction or function of ADAMHA.

TELEVISION COMMERCIALS ON SMOKING AND PREGNANCY

In 1986, lung cancer will become the No. 1 cause of cancer death among women. Additionally, rising numbers of women who smoke are falling victim to heart attacks and strokes. Pregnant women who smoke may pose serious health risks for their unborn children. Yet the Federal Trade Commission has found that less than 50 percent of women are aware of the health risks of smoking during pregnancy. For this reason, Mr. President, this legislation would ask the Secretary of Health and Human Services to prepare announcements for television on the health risks to women which result from cigarette smoking.

ALCOHOL CONTENT LABELING

Currently Federal law requires the labeling of alcohol content for most wines and all distilled spirits. Yet perhaps the most popular drink among our young people, beer, is excluded from this requirement. This legislation would assure that consumers of "malt beverages" be informed as to the alcohol content of such beverages. This provision would simply provide equal treatment regarding the labeling of alcohol content for both "malt beverages" and for distilled spirits.

Mr. President, I have long advocated content labeling on food products. I held hearings where we discussed the need to let consumers know how much salt and fat there was in the food they eat. This legislation is similar. Consumers must be given every opportunity to know just what it is they are consuming.

TECHNICAL AMENDMENT

This legislation would also seek to recodify under title V all of the mental health components of the Public Health Service Act which currently exist under title III. This is simply a recodification effort and in no way changes any authority of the National Institute on Mental Health or ADAMHA.

Additional changes in current law which this legislation proposes include:

Flexibility would be allowed in cases of national public health emergencies thereby allowing NIDA and NIAAA to better cope, as they were asked to this year, with the horrifying AIDS epidemic. This will also allow NIDA, in particular to move rapidly in response to designer drugs.

Animal research standards currently applicable for the National Institutes on Health would apply to ADAMHA.

The Institutes would be allowed to use volunteers for tasks such as feeding research animals.

The advisory councils which oversee grant applications for each of the Institutes would consist of nine members from the scientific community and three members from the public sector, including one individual representing public relations.

The effectiveness of these Institutes is vital to the social and economic health of this Nation and our children's children. Only if they are given the tools for prevention, education, and research will they be equipped for the war against drug abuse.●

By Mr. STAFFORD (for Mrs. HAWKINS, for herself, Mr. STAFFORD, Mr. HATCH, Mr. PELL, Mr. RIEGLE, Mr. SIMON, Mr. DODD, Mr. KENNEDY, Mr. CHAFEE, Mr. KERRY, Mr. WEICKER, Mr. BYRD, and Mr. ANDREWS):

S. 2444. A bill to reauthorize the Head Start Act, the Low-Income Home Energy Assistance Act of 1981, the Community Services Block Grant Act, the Dependent Care State Grant Program, and for other purposes; to the Committee on Labor and Human Resources.

HUMAN SERVICES REAUTHORIZATION ACT

Mr. STAFFORD. Mr. President, I am introducing for Senator HAWKINS the Human Services Reauthorization Act of 1986 to provide for the reauthorization of four very vital human service programs, Head Start, Low-Income Home Energy Assistance, Community Services Block Grant, and the Dependent Care Services Program. We are joined in this effort by our fellow Senators, Mr. HATCH, Mr. DODD, Mr. KENNEDY, Mr. CHAFEE, Mr. RIEGLE, Mr. PELL, Mr. SIMON, Mr. BYRD, Mr. WEICKER, Mr. KERRY, and Mr. ANDREWS.

The bill provides for a 4-year reauthorization of four programs that serve our low-income and elderly citizens. We provide for very modest growth in the program over the next 4 years even though we are painfully aware the need far outstrips the current level of appropriations for the programs.

The bill authorizes the Head Start Program for $1,130,540,000 for fiscal year 1987. This is a 4-percent increase over the fiscal year 1986 appropriation level pre-Gramm-Rudman-Hollings March 1 cuts. In fiscal years 1988-90, the authorization level would increase by 4 percent each year.

The Low-Income Home Energy Assistance Program would be authorized at $2,163 million for fiscal year 1987. This is a 3-percent increase over the fiscal year 1986 appropriation level pre-Gramm-Rudman-Hollings cuts. The Energy Program would grow at a 3-percent rate for the next 3 fiscal years authorized.

The Low-Income Home Energy Program section of the bill also provides additional language to further clarify the income disregard provisions of the law.

The Community Services Block Grant authorization is set at $381,409,000 for fiscal year 1987. This is a 3-percent increase over the fiscal year 1986 authorization level prior to the Gramm-Rudman-Hollings cuts. The authorization levels are increased by 3 percent for the 3 additional years in the bill.

Last but not least the bill reauthorizes the Dependant Care Services Program at $20 million for fiscal year 1987 and the 2 succeeding fiscal years. In addition, the bill contains many of the recommendations from the extensive hearing held by Senator HAWKINS on reauthorization of these programs. Under Senator HAWKINS sponsorship, this bill will make further improvement in the delivery of human services to our elderly and low-income Americans.

Mr. President, the continuation of these important programs is needed to meet some of the needs of elderly and low-income Americans, and I ask my fellow Senators' support for this bill.

Mr. President, I ask unanimous consent that the text of the bill, and the section-by-section analysis be printed in the RECORD at the end of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2444

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Human Services Reauthorization Act of 1986".

TITLE I—THE HEAD START PROGRAM

REAUTHORIZATION

SEC. 101. Section 639 of the Head Start Act (42 U.S.C. 9834) (hereafter in this title referred to as the "Act") is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 639. There are authorized to be appropriated for carrying out the provisions of this subchapter $1,130,542,000 for fiscal year 1987, $1,175,764,000 for fiscal year 1988, $1,222,795,000 for fiscal year 1989, and $1,271,717,000 for fiscal year 1990.".

ALLOTMENT OF FUNDS

SEC. 102. (a) INDIAN AND MIGRANT PROGRAMS.—Section 640(a)(2)(A) of the Act is amended to read as follows:

"(A) Indian and migrant Head Start programs and services for handicapped children, except that there shall be made available for use by Indian and migrant Head Start programs, on a nationwide basis, 7 1/10 percent of the total amount of funds available for this subchapter during such fiscal year;".

(b) TRAINING AND TECHNICAL ASSISTANCE.—The second sentence of section 640(a)(2) of the Act is amended to read as follows: "In any fiscal year in which the appropriation for which the program authorized by this subchapter is less than the amount appropriated for fiscal year 1984, the minimum reservation contained in clause (C) of this paragraph shall not apply and the amount reserved for training and technical assistance activities described in such clause (C) shall be 3 percent of the total amount available during such fiscal year for this subchapter.".

COORDINATION

SEC. 103. Section 642(c) of the Act is amended by inserting before "programs" the following: "State and local".

PARTICIPATION IN HEAD START PROGRAMS

SEC. 104. Section 645(a) of the Act is amended by striking out "1986" and by inserting "1990".

TITLE II—THE DEPENDENT CARE STATE GRANT PROGRAM

REAUTHORIZATION

SEC. 201. Section 670A of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9871) (hereafter in this title referred to as the "Act"), relating to grants to States for planning and development of dependent care programs, and for other purposes, is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 670A. For the purpose of allotments to States to carry out the activities described in section 670D, there are authorized to be appropriated $20,000,000 for the fiscal year 1987 and for each of the two succeeding fiscal years.".

AMENDMENTS ON DEPENDENT CARE SERVICES INFORMATION; LICENSING

SEC. 202. (a) DEPENDENT CARE SERVICES INFORMATION.—Subsection (a) of section 670D of the Act is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by striking out "shall" in the second sentence and inserting in lieu thereof "may";

(3) by redesignating clauses (1), (2), (3), (4), (5), (6), and (7) in the second sentence as clauses (A), (B), (C), (D), (E), (F), and (G), respectively; and

(4) by striking out the third sentence and inserting in lieu thereof the following:

"(2) The State, with respect to the uses of funds described in paragraph (1) of this subsection shall—

"(A) provide assurances that no information will be included with respect to any dependent care services which are not provided in compliance with the laws of the State and localities in which such services are provided; and

"(B) provide assurances that the information provided will be the latest information available and will be kept up to date.".

(b) SCHOOL-AGE CHILD CARE SERVICES.—(1) Section 670D(b)(1) of the Act is amended by striking out "where school facilities are not available".

(2) Section 670D(b)(2)(E) of the Act is amended by inserting before "licensing laws" the following: "child care".

SCHOOL-AGE CHILD DEFINITION

SEC. 203. Section 670G(7) of the Act is amended by inserting before the semicolon a comma and the following: "except that in any State which by State law children at an earlier age are provided free public education, the age provided in State law shall be substituted for age five".

SHORT TITLE

SEC. 204. Chapter 8 of title VI of the Act is amended by adding at the end thereof the following new section:

"SHORT TITLE

"SEC. 670H. This subchapter may be cited as the 'State Dependent Care Development Grants Act'.".

TITLE III—LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM

REAUTHORIZATION

SEC. 301. Section 2602(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(b)) (hereafter in this title referred to as the "Act") is amended to read as follows:

"(b) There is authorized to be appropriated to carry out the provisions of this title, $2,163,000,000 for the fiscal year 1987, $2,227,890,000 for the fiscal year 1988, $2,294,726,000 for the fiscal year 1989, and $2,363,567,000 for the fiscal year 1990.".

ADMINISTRATION OF ENERGY CRISIS INTERVENTION PROGRAM

SEC. 302. Section 2604(c) of the Act is amended by inserting at the end thereof the following: "Such entities shall include community-based organizations (such as agencies on aging or community action programs).".

CALCULATION OF GRANTS TO INDIAN TRIBES

SEC. 303. Section 2604(d)(2) of the Act is amended—

(1) by striking out "in such State with respect to which a determination under this subsection is made" and inserting in lieu thereof "and residing within the State on

the reservation of the tribes or on trust lands adjacent to such reservation";

(2) by inserting before the period at the end of such section a comma and the following: "or such greater amount as the Indian tribe and the State may agree upon"; and

(3) by adding at the end thereof the following: "In cases where a tribe has no reservation, the Secretary, in consultation with the tribe and the State, shall define the number of Indian households for the determination under this paragraph.".

APPLICATIONS AND REQUIREMENTS

SEC. 304. (a) STATE PROCEDURES.—Section 2605(b)(5) of the Act is amended—

(1) by striking out ", in a manner consistent with the efficient and timely payment of benefits,"; and

(2) by inserting after "size" a comma and the following: "assure that the neediest households receive the maximum assistance, and provide timely and efficient payment of benefits".

(b) CONFORMING AMENDMENTS.—Section 2605(b) of the Act is amended—

(1) by striking out clauses (14), (15), and (16);

(2) by inserting "and" at the end of clause (13); and

(3) by redesignating clause (17) as clause (14).

CONTENTS OF STATE PLAN

SEC. 305. Section 2605(c)(1) of the Act is amended by striking out clauses (A) through (E) and inserting in lieu thereof the following:

"(A) describes the eligibility requirements to be used by the State for each type of assistance to be provided under this title, including criteria for designating an emergency under section 2604(c);

"(B) describes the benefit levels to be used by the States for each type of assistance including assistance to be provided for emergency crisis intervention and for weatherization and other energy-related home repair;

"(C) contains estimates of the amount of funds the State will use for each of the programs under such plan and describes the alternative use of funds reserved under section 2504(c) in the event any portion of the amount so reserved is not expended for emergencies;

"(D) describes weatherization and other energy-related home repair the State will provide under subsection (k);

"(E) describes how the State will carry out assurances in clauses (3), (4), (5), (6), (7), (8), (10), (12), and (13) of subsection (b); and

"(F) contains any other information determined by the Secretary to be appropriate for purposes of this title.".

CONSISTENT TREATMENT OF ENERGY ASSISTANCE PAYMENTS

SEC. 306. (a) TREATMENT OF PAYMENTS.—Section 2605(f) of the Act (42 U.S.C. 8624(f)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by striking out "provided to" and inserting in lieu thereof "provided directly to, or indirectly for the benefit of,"; and

(3) by adding at the end thereof the following new paragraph:

"(2) In carrying out the provisions of paragraph (1), for purposes of determining any excess shelter expense deduction under section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e))—

"(A) the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly to, or indirectly for the benefit of, such household; and

"(B) no distinction may be made among households on the basis of whether such payments or allowances are provided directly to, or indirectly for the benefit of, any of such households.".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1986, or on the date of the enactment of this Act, whichever is later.

TITLE IV—COMMUNITY SERVICES BLOCK GRANT

REAUTHORIZATION

SEC. 401. (a) GENERAL AUTHORIZATION.—Section 672(b) of the Community Services Block Grant Act (42 U.S.C. 9901) (hereafter in this title referred to as the "Act") is amended by adding at the end thereof the following new sentence: "There is authorized to be appropriated $381,409,000 for the fiscal year 1987, $392,851,000 for the fiscal year 1988, $404,636,000 for the fiscal year 1989, and $416,775,000 for the fiscal year 1990, to carry out the provisions of this subtitle.".

(b) COMMUNITY FOOD AND NUTRITION.—Section 681A(b) of the Act is amended by striking out "1985 and 1986" and inserting in lieu thereof "1987, 1988, and 1989".

DEFINITION; ELIGIBLE ENTITY

SEC. 402. The first sentence of section 673 of the Act is amended by inserting after "1981" a comma and the following: "or which came into existence during fiscal year 1982 as a direct successor in interest to such a community action agency or community action program and meets all the requirements under section 675(c)(3) of this Act with respect to the composition of the board.".

REQUIREMENTS

SEC. 403. (a) TRANSFER AUTHORITY.—Section 675(c)(5) of the Act is amended to read as follows:

"(5) provide assurances that the State may transfer funds, but not to exceed 5 percent of its allotment under section 674, to increase the level of assistance otherwise available to eligible entities under this subtitle, to support services under the Older Americans Act of 1965, the Head Start program under subchapter B of chapter 8 of subtitle A of this title, the energy crisis intervention program under title 26 of this Act (relating to low-income home energy assistance), or the Temporary Emergency Food Assistance Act of 1983, or to provide assistance for State awarded discretionary grants to contribute to the goals of this subchapter to address the causes of poverty, except that the State may not transfer any funds which would diminish the requirement of the State under clause (2)(A) of this subsection;".

(b) TERMINATION PROCEDURES.—(1) Section 675(c)(11) of the Act is amended by inserting after "subject to" the following: "the procedures and".

(2) Section 676A of the Act is amended—

(A) by redesignating the section as subsection (b), and

(B) by inserting before the redesignated subsection (b) the following:

"SEC. 676A. (a) Whenever a State violates the assurances contained in section 675(c)(11) and terminates the funding of a community action agency or migrant and seasonal farmworker organization prior to the completion of the State's hearing and the Secretary's review as required in section 679 of this Act, the Secretary shall assume responsibility for providing financial assistance to the community action agency or migrant and seasonal farmworker organization affected.".

(3) Section 676A of the Act, as amended by this subsection, is further amended by adding at the end thereof the following:

"(c) The Secretary shall conduct the review through the Office of Community Services, which shall promptly conduct such review and issue a written determination together with the reasons of the Secretary therefor.".

(4) The heading of section 676A of the Act is amended to read as follows:

"PROCEDURES FOR A REVIEW OF TERMINATION OF FUNDING".

(c) REPEAL OF EXECUTED PROVISION.—The last sentence of section 675(c) is repealed.

FISCAL EVALUATIONS

SEC. 404. (a) GENERAL RULE.—Section 679(b)(1) of the Act is amended—

(1) by inserting "evaluations and" after "fiscal year";

(2) by adding before the period at the end thereof a comma and the following: "and especially with respect to compliance with sections 672(a), 675(b), and (c)(1) through (11)"; and

(3) by adding at the end thereof the following new sentences: "Such evaluation shall include identifying the impact that assistance furnished under this subtitle has on children, homeless families, and the elderly poor. A report of the evaluation, together with recommendations of improvements designed to enhance the benefit and impact to people in need, will be sent to each State evaluated. Upon receiving the report the State will then submit a plan of action in response to the recommendation contained in the report. The results of such evaluation shall be submitted annually to the Chairman of the Committee on Education and Labor of the House of Representatives and the Chairman of the Committee of Labor and Human Resources of the Senate.".

(b) CONFORMING AMENDMENT.—Section 675(i) is repealed.

DISCRETIONARY AUTHORITY

SEC. 405. (a) GENERAL RULE.—(1) The matter preceding clause (1) of section 681(a) of the Act is amended—

(A) by striking out "is authorized, either directly or through" and inserting in lieu thereof "is authorized to make"; and

(B) by inserting before "contracts" the following: "to enter into".

(2) Section 681(a)(1) of the Act is amended by inserting before the semicolon a comma and the following: "including national conferences, newsletters, and collection and dissemination of data about programs and projects assisted under this subtitle".

(3) Section 681(a)(2)(A) of the Act is amended to read as follows:

"(A) special programs of assistance, awarded on a competitive basis, to private, locally initiated, nonprofit community development corporations, (or affiliates of such corporations) governed by a board consisting of residents of the community and business and civic leaders, which sponsor enterprises providing employment and business development opportunities for low-income residents of the community designed to increase business and employment opportunities in the community;".

(4) Section 681(a)(2)(B) of the Act is amended by inserting before the semicolon the following: "except that loans to borrow-

ers made after the date of enactment of the Food Security Act of 1985 and prior to the date of enactment of the Human Services Reauthorization Act of 1986 shall be transferred to and administered by the Secretary of Agriculture subject to the provisions of the Food Security Act of 1985".

(5) Section 681(a)(2)(D) of the Act is amended by inserting before the semicolon a comma and the following: "with special priority to rural community assistance programs".

(b) NATIONAL CONFERENCE PROVISIONS.—Section 681 of the Act is amended—

(1) by redesignating subsection (b) as subsection (d); and

(2) by adding after subsection (a) the following new subsections:

"(b)(1) The Secretary shall appoint an Advisory Panel consisting of nine members which shall be convened to develop and hold a national conference designed to promote a full exchange of information on past approaches to the problems of poverty in the formulation of innovative plans for future methods of attacking the causes of poverty and the encouragement of self-sufficiency of the poor in the United States.

"(2) The membership of the Advisory Panel shall consist of—

"(A) three members elected by the directors of eligible entities receiving assistance under this subtitle;

"(B) two representatives selected by the National Association of State Community Service Programs;

"(C) one member of the Office of Community Services appointed by the Secretary;

"(D) one member appointed by the Secretary; and

"(E) two members elected by the members of the panel described in clauses (A) through (D) before the first meeting of the Advisory Panel.

The two members of the Advisory Panel selected under clause (E) shall represent nonprofit eleemosynary organizations, members of academic community, or charitable foundations, and have a history of involvement in self-sufficiency programs for the poor, the elimination of the causes of poverty, or the study of the underpinnings of poverty.

"(3) The Secretary shall from amounts appropriated for administrative expenses for the Department, reserve $100,000 to carry out the provisions of this subsection.

"(c)(1) The final reports on projects completed with assistance made under this section to be summarized and presented annually to the Chairman of the Committee on Education and Labor of the House of Representatives and the Chairman of the Committee on Labor and Human Resources of the Senate. The report shall contain a list of grantees who have received funds under this section outside of the competitive process.

"(2) The Secretary shall, at the end of each fiscal year, prepare and distribute a catalog listing all the projects assisted under clause (A) of subsection (a)(2) in that year. The catalog shall include—

"(A) a description of each project;

"(B) an identification of the agency receiving the award, including the name and address of the principal investigator;

"(C) a description of the project objectives; and

"(D) a statement of the accomplishments of the project.".

DEMONSTRATION PARTNERSHIP AGREEMENTS ADDRESSING THE NEEDS OF THE POOR

SEC. 406. (a) GENERAL AUTHORITY.—(1) In order to provide for the self-sufficiency of the Nation's poor, the Secretary may make grants from funds appropriated pursuant to subsection (e) to eligible entities for the development and implementation of new and innovative approaches to deal with particularly critical needs or problems of the poor which are common to a number of communities. Grants may be made only with respect to applications which—

(A) involve activities which can be incorporated into or be closely coordinated with eligible entities' ongoing programs;

(B) involve significant new combinations of resources or new and innovative approaches involving partnership agreements; or

(C) are structured in a way that will, within the limits of the type of assistance or activities contemplated, most fully and effectively promote the purposes of the Community Services Block Grant Act.

(2) No grant may be made under this section unless an application is submitted to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may require.

(b) FEDERAL SHARE; LIMITATIONS.—(1) Grants awarded pursuant to this section shall be used for new programs and shall not exceed 50 per centum of the cost of such new programs.

(2) Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, or services.

(3) No more than one grant may be made to any eligible entity and no grant may exceed $250,000.

(4) No application may be approved for assistance under this section unless the Secretary is satisfied that—

(A) the activities to be carried out under the application will be in addition to, and not in substitution for, activities previously carried on without Federal assistance; and

(B) funds or other resources devoted to programs designed to meet the needs of the poor within the community, area, or State will not be diminished in order to provide the matching contributions required under this section.

(c) DISSEMINATION OF RESULTS.—As soon as practicable, but no later than 90 days after the expiration of any grant awarded under this section, the Secretary shall prepare and make available upon request to each State and eligible entity descriptions of the demonstration programs assisted under this section, any relevant information developed and results achieved, so as to provide models for innovative programs to other eligible entities.

(d) DEFINITIONS.—As used in this section, the term—

(1) "eligible entity" has the same meaning given that term by section 673(1) of the Community Services Block Grant Act; and

(2) "Secretary" means the Secretary of Health and Human Services.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for each of the fiscal years 1987, 1988, and 1989, to carry out this section.

TITLE V—CHILD DEVELOPMENT ASSOCIATE SCHOLARSHIP ASSISTANCE PROGRAM

SHORT TITLE

SEC. 501. This Act may be cited as the "Child Development Associate Scholarship Assistance Act of 1985".

GRANTS AUTHORIZED

SEC. 502. The Secretary is authorized to make a grant for any fiscal year to any State receiving a grant under title XX of the Social Security Act for such fiscal year to enable such State to award scholarships to eligible individuals within the State who are candidates for the Child Development Associate credential.

APPLICATIONS

SEC. 503. (a) APPLICATION REQUIRED.—A State desiring to participate in the grant program established by this title shall submit an application to the Secretary in such form as the Secretary may require.

(b) CONTENTS OF APPLICATIONS.—A State's application shall contain appropriate assurances that—

(1) scholarship assistance made available with funds provided under this title will be awarded—

(A) only to eligible individuals,

(B) on the basis of the financial need of such individuals, and

(C) in amounts sufficient to cover the cost of application, assessment, and credentialing for the Child Development Associate credential for such individuals; and

(2) not more than 10 percent of the funds received by the State under this title will be used for the costs of administering the program established in such State to award such assistance.

(c) EQUITABLE DISTRIBUTION.—In making grants under this title, the Secretary shall—

(1) distribute such grants equitably among States in the various regions of the Nation, and

(2) ensure that the needs of rural and urban areas are appropriately addressed.

DEFINITIONS

SEC. 504. As used in this title—

(1) "eligible individual" means a candidate for the Child Development Associate credential whose income does not exceed the poverty line, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), by more than 50 percent;

(2) "Secretary" means the Secretary of Health and Human Services;

(3) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

ADMINISTRATIVE PROVISIONS

SEC. 505. (a) REPORTING.—Each State receiving grants under this title shall annually submit to the Secretary information on the number of eligible individuals assisted under the grant program, and their positions and salaries before and after receiving the Child Development Associate credential.

(b) PAYMENTS.—Payments pursuant to grants made under this title may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

AUTHORIZATION OF APPROPRIATIONS

SEC. 506. There are authorized to be appropriated $1,500,000 for the fiscal year 1987 and for each succeeding fiscal year ending prior to October 1, 1990, for carrying out the provisions of this title.

SECTION-BY-SECTION ANALYSIS

The first sentence of the bill provides that the Act may be cited as the "Human Services Reauthorization Act of 1986".

TITLE I—HEAD START

Section 101 reauthorizes Head Start through fiscal year 1990:

1987	$1,130,542,000
1988	$1,175,764,000
1989	$1,222,795,000
1990	$1,271,717,000

Section 102 eliminates the cost of living adjustment for Indian and Migrant Head Start programs. It specifies that national funding for these programs is to be no less than 7.1% of the amount appropriated. This section also provides that in years when the Head Start appropriations are less than the FY 84 appropriation, funding for training and technical assistance shall be 3% of the appropriation.

Section 103 specifies that the type of programs Head Start agencies are to coordinate with are "state and local."

Section 104 continues the prohibition through 1990, of any change in the method the Secretary uses to calculate income used to prescribe eligibility for the participation of persons in the Head Start program if the change would result in any reduction or exclusion of persons in the program.

TITLE II—DEPENDENT CARE STATE GRANT PROGRAM

Section 201 reauthorizes the Dependent Care programs at $20,000,000 for fiscal years 1987-1989.

Section 202 provides that the specified types of information on dependent care services to be made available by resource-and-referral systems are optional rather than mandatory. It requires states to provide assurances to the Secretary that

1. The grant funds will not be used to provide information on dependent care services that are not in compliance with state and local laws

2. The information provided will be the latest available and will be kept up to date.

The section also eliminates the requirement that before-and-after-school child care programs be provided at community centers only where school facilities are not available and clarifies that the licensing laws and regulations with which applicants must comply are those relating to "child care."

Section 203 revises the definition of school-aged children to include children under age five, the younger age to be consistent with the age at which each state provides free public education to children.

Section 204 adds a new section to permit the Act to be cited as the "State Dependent Care Development Grants Act."

TITLE III—LOW INCOME HOME ENERGY ASSISTANCE

Section 301 authorizes appropriations:

1987	$2,163,000,000
1988	2,227,890,000
1989	2,294,726,000
1990	2,363,567,000

Section 302 clarifies that for the purposes of the Food Stamp Act, LIHEAP payments or allowances shall be deemed to be spent for heating or cooling expenses. No distinction shall be made regarding whether payments or allowances are provided directly to or indirectly for the benefit of any household. Amendments in this section are to become effective on date of enactment or October 1, 1986, whichever is later.

Section 303 provides that community-based organizations such as Agencies on Aging or Community Action Programs are the types of entities which may administer the energy programs.

Section 304 makes two changes in the criteria the Secretary must follow in establishing the portion of a state's allotment to be sent aside for direct grants to Indian tribes. First, the formula would be keyed to the number of Indian households (rather than only member households of the particular tribe making the request) residing on the reservation and adjacent trust lands. In cases where a tribe has no reservation, the Secretary shall define the population after consultation with the Indian Tribe and the state. The section also allows the Secretary to set aside for direct grants to the Indian tribes an amount greater than that produced by the statutory formula if that is agreed upon by the state and the governing organization of the Tribe.

Section 305 expands the requirements for the annual application under Section 2605(c) to stress that the neediest households receive the maximum assistance under LIHEAP.

Section 306 reorganizes the requirements for the annual application under Section 2605(b) of the Act and the State plan under Section 2605(c) of the Act.

TITLE IV—COMMUNITY SERVICES BLOCK GRANT

Section 401 authorizes appropriations:

1987	$381,409,000
1988	392,851,000
1989	404,636,000
1990	416,775,000

It also extends authority for appropriations for the Community Food and Nutrition program through 1989.

Section 402 expands the definition of eligible entity to include programs which came into existence in FY82 as a direct successor to a community action agency and meets all of the board composition requirements of section 675(c)(3).

Section 403(a) requires that the allowed transfer of up to 5% of a state's allotment to currently specified programs or to provide assistance for state-awarded discretionary grants is to increase funds otherwise available to eligible entities under the CSBG program. It prohibits the transfer of funds that would diminish the state's responsibility to pass through 90% of funds to eligible entities.

Section 403(b) establishes procedures which the Secretary must follow in reviewing State proposed termination of funding to CAAs or migrant and seasonal farmworker organizations. These procedures include a prompt review and written determination by the Office of Community Services. The section also requires the Secretary to assume responsibility for funding the affected eligible entity if a state terminates funding prior to the completion of the required state hearing and Secretary's review.

Section 403(c) eliminates the transitional provision which had prohibited against organizations receiving funds under the 90% pass-through requirement for receiving additional funds.

Section 404 combines the required investigation and evaluation of compliance requirements in the CSBG program. It states that such compliance evaluations are to be made especially with regard to: Grants to states to ameliorate the causes of poverty in communities; state public hearings on the proposed use and distribution of funds; all the 11 agreements required of states in their annual application; for their allotment of funds.

Such evaluations are to include the impact of funds under this program on children, homeless families and the elderly poor. The Secretary will send recommendations of improvements on how to enhance the benefit and impact to people in need to each state and the state will then submit a plan of action in response to the recommendation contained in the report. Evaluation results are to be submitted annually to the Chairmen of the House Education and Labor and Senate Labor and Human Resources Committees.

Section 405(a) in addition to technical amendments, authorizes the Secretary to fund national conferences, newsletters, and the collection and dissemination of data about programs and projects funded under the CSBG program as part of training activities authorized under the program. It also specifies that Community Development Corporations, which are one of the special emphasis programs for which funding is authorized, are to be governed by a board consisting of residents of the community and business and civic leaders. In addition, this section gives special priority to rural community assistance programs under the special emphasis program on rural housing and community facilities development.

Section 405(b) directs the Secretary to appoint an advisory panel to develop and hold a national conference to exchange information on past approaches to the problems of poverty and to formulate plans for future methods attacking the causes of poverty. The Secretary is directed to reserve $100,000 from administrative expenses to fund this conference. This section specifies the composition of the nine member panel and who is to designate each of its members.

Section 405(c) requires that the Chairman of the House Education and Labor, and Senate Labor and Human Resources Committees are to be provided annually with a summary of final reports on projects assisted under the Secretary's discretionary authority and a list of grantees who have received funds under this authority outside of the competitive process. This section directs the Secretary to compile and make available a catalog listing information on the projects funded under the discretionary grant program.

Section 406 authorizes $10,000,000 each for FY 1987-89 for a new program for the development and implementation of new and innovative approaches to deal with particularly critical needs or programs of the poor which are common to a number of communities. Grants are to be made only for the projects which can be closely coordinated with grantees' ongoing programs; involve significant new combinations of resources of new and innovative approaches involving partnership agreements; and will effectively promote the purposes of the CSBG program.

The Secretary is authorized to make grants to eligible entities to pay for no more than 50% of the costs of the program, with the non-federal share to be in kind or in cash. Not more than one grant may be made to a single entity, and no grant may exceed $250,000. Federal funds are to be for new programs; they may not substitute for programs previously carried out without federal assistance; and other resources for the poor may not be diminished to provide the non-federal match required for this program.

The Secretary is required to prepare and make available upon request to each state and eligible entity information on the results of any funded projects not later than 90 days after the expiration of the grant awarded.

(Mr. STAFFORD submitted the following statement on behalf of Mrs. HAWKINS.)

HUMAN SERVICES REAUTHORIZATION ACT

● Mrs. HAWKINS. Mr. President, today I am introducing legislation to reauthorize four important Federal programs, the Head Start Act, the Low Income Home Energy Assistance Act, the Dependent Care Program and the Community Services Block Grant. This legislation, the Human Services Reauthorization Act of 1986 is cosponsored by Senator HATCH, Senator STAFFORD, Senator DODD, Senator KENNEDY, Senator CHAFEE, Senator BYRD, Senator ARMSTRONG, Senator KERRY, Senator WEICKER, Senator RIEGLE, Senator PELL, and Senator SIMON.

This reauthorization legislation is based upon the testimony presented before my Subcommittee on Children, Family, Drugs and Alcoholism and incorporates provisions that were included in Senator STAFFORD's S. 2081 the Human Services Reauthorization Act, Senator HATCH's S. 2386, the Dependent Care Development Reauthorization Act, and Senator DODD's S. 804, the CDA Scholarship Assistance Act.

HEAD START

The Head Start Program is one of the most successful of the Federal poverty programs. In its 21 year history it has assisted low-income children in getting a head start in life. Head Start is not simply a childcare program. It is a multidisciplinary program which monitors the child's medical, dental, and mental health development.

During our subcommittee's reauthorization hearing on this program, I recited countless examples of success stories involving not just Head Start children, but Head Start families. I placed special emphasis on the family, because this program makes a concerted effort to involve the family in the child's development. Over 63 percent of Head Start parents, about 420,000 last year, volunteer to participate in the program, drawing them closer to their children and permitting them to gain from their child's development.

As I analyzed the history of this program and reviewed the testimony before my subcommittee, I agree with the comments of Senator KERRY, who told Dorcas Hardy, the Assistant Secretary for Human Development Services that "I hope we can give you a little more money than you asked for." That is exactly what this reauthorization legislation provides for by authorizing $1,130,542,000 in fiscal year 1987 and providing a 4 percent inflation increase in subsequent years.

The only modifications I am making in the Head Start Act are to express the funding levels for Indian and Migrant Head Start Programs. After reviewing the salaries of the Indian and Migrant Head Start teachers, I have determined that they are near parity with other Head Start faculty and thus I have acted on the administration's recommendation to eliminate the cost-of-living adjustment for Indian and migrant Head Start teachers. Another modification I have made is to adjust the training and technical assistance in terms of a proportion of the total Head Start budget. Therefore, if the appropriations for the total program are reduced, the size of the programs will remain the same to proportion that they have in the past.

STATE DEPENDENT CARE DEVELOPMENT GRANTS ACT

This legislation also reauthorizes the dependent care programs who have had a torturous and troubled history, despite the fact that the need for some type of Federal financial incentive for these types of childcare is well documented. This section of the Human Services Reauthorization Act is based on a proposal developed by the chairman of the Senate Labor and Human Resources Committee, ORRIN HATCH. The legislation would reauthorize the State Dependent Care Development Grants Act for an additional 3 years at an authorized level of $20 million a year.

The reauthorization legislation amends the act to clarify the assurances that the Dependent Care Information and Referral Program must make to the State to be eligible for assistance. It inserts the words "childcare" before the licensing requirements to stress that the School-Aged Childcare Program is expected to meet all of the licensing requirements appropriate for a childcare facility that served school-aged children, not the licensing requirements appropriate for a school. And the definition of school-aged child is expanded to take into account those States who provide free public education at an age younger than 5 years. The act is also amended to eliminate the priority given to school facilities, thus permitting school-based facilities to compete on an equal basis with community-based school-aged childcare programs for these development funds.

LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM

The Low-Income Home Energy Assistance Program [LIHEAP] affects close to 7 million households all across our county, but these 7 million represent only one-quarter of the low-income people who are eligible for this assistance.

Despite the growth of this program, from $200 million when it began in 1977, to the $2.1 billion authorized last year, States still run out of funds before they are able to assist all those who need help. The LIHEAP Program was designed to provide assistance to the poor—the working poor, the handicapped poor, the elderly poor where it has been established that there is a desperate need—often a life or death need—for this energy assistance. I think it is helpful and encouraging to point out that LIHEAP programs have become a base on which other resources, both financial and human have been mobilized. In addition the LIHEAP Program has been a catalyst to generate millions of dollars of State contributions.

The reauthorization period has been extended to 4 years with a 3 percent per year increase included as an inflation factor. Multiyear reauthorization will help ensure that LIHEAP is administered smoothly.

Language has been strengthened to reiterate congressional intent that LIHEAP benefits are not counted as income in determining the eligibility or amount of assistance under other Federal or State assistance programs.

The restriction that Indian tribal organizations may serve only members of the tribe has been amended. This language will allow such organizations to extend service under the LIHEAP program to Indians and non-Indian households in a community. LIHEAP has, since its inception, enjoyed bipartisan support. I welcome my colleagues's support of this legislation and I look forward to working with them in reaffirming this commitment to LIHEAP and the poor in America.

Community based organizations such as Agencies on Aging or Community Action programs are specified as eligible entities to administer the State's energy crisis program.

Finally, the reauthorization reorganizes the requirements for the annual application and State plans under the act, eliminating one requirement on estimates of energy usage and costs and stressing that the neediest households receive the maximum assistance under LIHEAP.

COMMUNITY SERVICES BLOCK GRANT

This block grant is one of the most effective assaults we have mounted on the causes of poverty in our country. It is a "boot strap" program that helps people help themselves; that creates new jobs for the unemployed at half the cost of similar programs in the Department of Labor; that encourages its participants to feel self esteem and pride in work well done.

When we talk of a safety net that protects Americans from starvation, homelessness, and lack of medical care, the Community Service Block Grant is an intergral part of that safety net. It provides a flexibility and immediate emergency assistance in the delivery of fiscal assistance that can not be provided by the more rigid social service programs with their eligibility standards and guidelines. I believe that the small amount of money in this program provides the all important knots that hold the strands of that safety net together.

I am reauthorizing this program because I have found it to be a cost effective way to overcome the problems of poverty and to help people become self-sufficient, self-supporting citizens. As I toured community action agencies and reviewed the General Accounting Offices' report on the uses of CSBG funds, I became very impressed with the approach of programs funded under CSBG.

These programs offered a hand, not a hand-out. The workers and volunteers did not simply process the eligibility forms for welfare, they took a holistic approach to the individuals plight. The unemployed individual who may have initially come to the Community Action Agency for his share of free agriculture commodities is often guided into job training programs, his Children are enrolled in Head Start and he is told of the availability of weatherization funds for his home.

The reauthorization legislation authorizes this program for an additional 4 years at $381,409,000 in fiscal year 1987 with a 3 percent increase in the remaining years. The bill also reauthorizes the Community Food and Nutrition Program and authorizes $10 million for 3 years for a program of innovative demonstration projects addressing the needs of the poor by promoting partnerships between the Federal Government and State and communities. I feel that flexibility and innovative methods of addressing poverty are the heart and soul of the Community Services Block Grant and that dwindling Federal resources have prevented these programs from expanding their activities to better reach those in need.

The reauthorization legislation contains a number of provisions regulating the process for termination of funding of a community action agency, so that the needy dependent upon these services will not suffer if funding is terminated prior to complete administrative review. I am concerned that services to the needy might be disrupted because of political disputes.

I also feel that there is a need to clarify what types of projects the Secretary is authorized to fund from the discretionary fund. The legislation mandates an annual report from the Secretary to Congress that evaluates the impact of CSBG funds on children in poverty, homeless families, and the elderly poor. These reforms were prompted by testimony presented to my subcommittee on March 27 which indicated disturbing trends in the distribution of the Secretary's discretionary funds under the Community Service Block Grant.

Testimony presented before my subcommittee indicated that these discretionary moneys had been used to fund projects outside of the competitive process at the expense of programs who had been specifically cited in the authorizing legislation. Without getting into the merits of whether the CSBG discretionary funds should be allocated to fund the District of Columbia homeless shelter, I am disturbed that funds from the CSBG discretionary fund are being diverted from projects specifically cited in the act and intended by Congress to be funded through the Secretary's discretionary fund. This action indicated a need to clarify the expected uses and restrictions on projects funded under the Secretary's discretionary authority.

CHILD DEVELOPMENT ASSOCIATE SCHOLARSHIP ASSISTANCE ACT

The child development associate credential provides intensive, high-quality training for potential child care providers.

Following their training, these persons are assessed in child care settings prior to formal certification. Since the CDA program was established in 1975, nearly 17,000 child care workers have received the CDA credential. Thirty-one States and the District of Columbia require the CDA as a prerequisite for licensure as a childcare provider.

The Administration for Children, Youth and Families at HHS has declared it a national goal to have by 1990 at least one qualified adult who has either a degree in early childhood education or a CDA credential in every Head Start classroom. However, only 30 percent of the current Head Start teachers have such training. This is due to the fact that most CDA credital recipients, and most child care providers, are low income individuals who are seeking the means to gain self-sufficiency and avoid welfare dependency. The costs associated with CDA training and certification have soared in recent years, putting the program out of reach for some individuals. The cost of the certification fee alone is $325.

At the Head Start reauthorization hearing before my Subcommittee on Children, Family, Drugs and Alcoholism, we discussed this problem and the legislation sponsored by Senator CHRISTOPHER DODD, S. 804, the CDA Scholarship Assistance Act. At that hearing, Dr. Marilyn M. Smith, executive director of the National Association for the Education of Young children testified that although the cost of a CDA is very reasonable compared with other professional certifications, the cost is nonetheless perceived as a burden by the individual childcare provider.

Dr. Smith testified in favor of S. 804 stating that the Child Development Associate Scholarship Act will be of great assistance to individuals who need financial support in applying for the credential. High quality child care is a commodity in very short supply. Given the shortage of credentialed daycare providers, many parents find themselves torn between two unattractive options; leaving the workforce and possibly relying on government income assistance, or placing the child with a potentially unqualified care provider. I support Senator DODD's legislation to improve this situation and I am delighted to incorporate it into this legislation.●

● Mr. DODD. Mr. President, I am delighted to be an original sponsor of the Human Services Rauthorization Act of 1986. This legislation includes under a separate title the Child Development Associate Scholarship Assistance Act, a bill I introduced last year to provide scholarships for child-care workers seeking on-the-job training along with a professional credential. I wish to thank Senator HAWKINS, chair of the Subcommittee on Children, Family, Drugs, and Alcoholism on which I serve as ranking minority, for agreeing to include my bill, S. 804, as a part of this legislation.

I am also pleased to join Senators HAWKINS, HATCH, STAFFORD, PELL, and RIEGLE in sponsoring this reauthorization of the Head Start, Dependent Care Block Grant, Community Service Block Grant, and Low Income Energy Programs. These four programs are critical to the health, education, and welfare of millions of children and families at risk in this country. This legislative package would reauthorize these important human services programs for 4 years, providing for a 4-percent increase in Head Start, a 3-percent increase in community services and energy assistance, and level funding for child development associate scholarships, afterschool care and resource and referral programs, and community food and nutrition programs.

THE CHILD DEVELOPMENT ASSOCIATE SCHOLARSHIP ASSISTANCE PROGRAM

As founder and cochairman of the Senate children's caucus, I can attest to the skyrocketing demand for quality, affordable child care in this country. At the first children's caucus policy forum in June of 1983, we learned that as many as 15 million children between the ages of 5 and 12 lack any adult supervision after school because their parents must work. That estimate does not include the millions of preschool-age children with parents in the labor force who need child-care services.

One sure way to improve the quality of child care in this country is to improve the skills and performance of child-care workers. The child development associate scholarship title of this omnibus reauthorization will provide eligible child-care staff with training scholarships to perfect their skills through the Child Development Asso-

ciate [CDA] Assessment and Credentialing Program.

Mr. President, the Child Development Associate National Credentialing Program provides performance-based training for child-care providers. The training focuses on 13 core areas, essential building blocks of quality child care. Caregivers must provide the children under their supervision with safe, danger-free environments which promote healthy physical development. CDA candidates must know how to create good learning environments for children to encourage the development of cognitive and communications skills. Emphasis is placed on activities which will stimulate children to express themselves creatively and assist them to gain self-esteem. Candidates must be able to help children get along with each other and adults. Caregivers also must maintain open and informative relationships with each child's family, thereby encouraging full parental involvement. Last but not least, candidates are expected to become effective managers of child-care programs who will continue to seek new ways to improve the care of children in their charge.

Before a CDA credential is awarded, all candidates are assessed on the basis of their performance in a child-care setting. A local CDA assessment team both observes the candidate as she works with the children in her care and asks the parents of such children for their appraisals of her performance. Candidates themselves are also encouraged to play a role in the assessment process by providing dossiers of their accomplishments and participating in the local team's discussions.

The CDA credential is the only national credential formally certifying professional child-care skills. The first CDA credential was awarded on July 24, 1975. To date, more than 15,000 child-care workers have received the CDA credential. And, some States and the District of Columbia have made the CDA credential a part of their child-care licensing requirements. We are very much indebted to Prof. Ed Zigler of Yale University who established the CDA Credentialing Program over a decade ago during his tenure as Director of the Office of Child Development in the then Department of Health, Education, and Welfare.

The overwhelming majority of child-care workers are women who work exceedingly long hours for very little pay. Close to 90 percent of all family day-care providers, for example, earn less than the minimum wage. Yet such work provides an income for many women who would otherwise be dependent on the Aid for Dependent Children [AFDC] Program. Just as importantly, child-care workers make it possible for other mothers to enter the work force and gain self-sufficiency.

The CDA credential allows child-care workers to gain professional status and often to improve their salaries and benefits. Yet CDA candidates are now faced with over a 100-percent increase in the fee they must pay to be certified, from $35 to $325. Given the extremely low salaries of most child-care workers, such high fees could force many of them to forgo training and subsequent CDA certification.

The child development associate scholarship title will provide low-income child-care workers with scholarships to enable them to obtain CDA training and credentialing. The cost of my proposal is modest, totaling only $1.5 million on a yearly basis. Yet the benefits will be enormous for the workers who receive training and formal recognition of their skills as well as for the children in their care.

At present, some 3,000 child-care workers a year receive CDA certificates. With the scholarship program now included in this reauthorization, an additional 1,000 to 2,000 low-income providers could be trained and certified. Scholarships will be awarded to eligible caregivers on the basis of financial need. To cut down on administrative costs, the State agency responsible for the title XX social services block grant program would administer the scholarship program. And to follow up on the effectiveness of this small grant program, the State agency would tell the Secretary of Health and Human Services each year how many workers received scholarships and what their positions and salaries were both before and after receiving the CDA credential.

THE HEADSTART REAUTHORIZATION

As the New York Times noted in an editorial: "* * * American society does know one sure way to lead poor children out of a life of poverty * * * Project Head Start."

Given the crisis of children in poverty in this country, Head Start is good news indeed. For the biggest risk to the health, safety, and future well-being of close to 14 million American children is poverty. One out of every four children under the age of 6 now lives in a family whose income falls below the poverty line. For minority preschoolers, that figure is even higher: every other black child and close to every other Hispanic child will celebrate their 6th birthdays in poverty.

Yet poverty does not afflict only our very youngest citizens. Children of all ages now constitute the poorest age-group in America. More than one out of five Americans under the age of 18 is poor. In the cities of Hartford and New Haven in my State of Connecticut, that figure is higher with every other child living in poverty. And in cities across the country, adults living in families with children are now three times more likely to be poor than other adults.

Over the past 6 years, childhood poverty rates have skyrocketed. Even by conservative estimates, close to 4 million children have been added to the poverty rolls—the sharpest increase on record. Moreover, the depth of childhood poverty has intensified. Over 40 percent of all poor children live in families whose incomes do not even reach the halfway mark with respect to the poverty level.

The risks posed by childhood poverty are numerous and serious. Poverty results in a greater chance of abuse and neglect, poor health, and even death. Poor children who survive face a greater risk of dropping out of school, becoming teen parents, and ending up unemployed. The birth rate among white, unmarried adolescents has increased in recent years. And, as the children's defense fund pointed out in a study entitled "Black Children, White Children," black children today are more likely to be born into poverty, lack early prenatal care, have an adolescent or single mother, have an unemployed parent, be unemployed themselves as teenagers, and not go to college upon high school graduation.

But with the Head Start Program, we have a well-proven way to help children escape from poverty. The high/scope educational research foundation conducted a landmark study of high quality preschool programs like Head Start. This study, entitled "Changed Lives," followed a group of poor children from age three to adulthood. Half had attended a high quality preschool. The other half had not. Those with the preschool experience were twice as likely to graduate from high school, go on to college or vocational training, and to get jobs. Those without the preschool experience were more likely to drop out of school, to become teen parents, and to end up unemployed and dependent upon the welfare system. As cochairmen of the Senate children's caucus, Senator SPECTER and I will be distributing copies of "Changed Lives" to all our colleagues in the Senate.

The costs of high quality preschool education are not insignificant. But the costs of failing to provide children at risk with such a headstart on life are much, much higher. The center for population options just released a study revealing that teenage pregnancies in this country cost the welfare system $16 billion last year. And the cost of unemployment and welfare dependency in human terms show up in the grim statistics of child abuse and family violence.

As we consider the reauthorization of Head Start and celebrate its 20th anniversary, we must keep in mind that at present, we only reach 18 per-

cent of all children who are eligible for such services. And even though Head Start is not targeted to be cut in the President's fiscal year 1987 budget, reductions in other essential programs such as the Community Services Block Grant and the Child-Care Food Program will diminish the quality of Head Start. Thus, I am a cosponsor of this omnibus package to reauthorize Head Start in tandem with other critically important human services programs.

THE DEPENDENT CARE BLOCK GRANT REAUTHORIZATION

The Dependent Care Block Grant was authorized 2 years ago in response to new facts about the risks facing latchkey children in this country. This block grant was designed to provide start-up costs for after school care programs and child-care resource and referral programs. The need for such programs is great. Right now, more than half of all the towns in my State of Connecticut lack any after school program whatsoever to help children whose parents must work. But at a time when they should be expanding their services, after school care programs in eastern and western Connecticut are being forced to shut their doors because they cannot find sufficient funds to keep operating.

The demographics tell us that the demand for after school care programs is just not going to go away. As a program director in New Haven, CT, recently wrote me: "The community is in need of this service and our growth in 3 years only proves this further." The New Haven YMCA program started up in 1983 with 2 staff people and 1 van picking up 15 children at 2 area public schools. Today, 20 staff people use 4 vans and 2 rented school buses to pick up 170 children at 24 public schools.

Parents and child-care experts in New Haven and throughout Connecticut keep asking when their programs will be able to apply for funding under the Dependent Care Block Grant. Although $5 million was appropriated for this program, the administration continues to refuse to release those funds. Given that latchkey children who lack adult supervision are at much greater risk of physical and sexual abuse, accidental injury, alienation, and delinquency, the administration's 18-month delay in releasing funding was irresponsible and untenable. I regret that a representative from the administration was not present during the subcommittee hearing held on this reauthorization this past March. It is my hope that the reauthorization of this program will help convince the administration of the seriousness of congressional intent in providing the startup of afterschool care and resource and referral programs from Connecticut to California.

THE COMMUNITY SERVICES BLOCK GRANT REAUTHORIZATION

The Community Services Block Grant Program continues to serve children and families in most need. Millions of younger and older Americans receive food assistance under this program, combating hunger and malnutrition. Millions more receive housing, transportation, and employment assistance. Last but never least, countless other Americans are able to get educational and job training services through the community services block grant helping them to become self-supporting.

In addition to permitting community action agencies to deliver the above-described services to hard-pressed communities across the country, this legislative package also reauthorizes the Community Food and Nutrition Program. This program has been exemplary in my State of Connecticut in encouraging low-income communities to start child nutrition projects. I am delighted that such innovative attempts to meet the nutritional needs of children and adults in my State will continue.

LOW-INCOME ENERGY ASSISTANCE REAUTHORIZATION

Finally, the package I join in sponsoring today reauthorizes the Low-Income Energy Assistance Program. This program is very important to many residents in my State of Connecticut, where freezing winter temperatures and high heating costs all too often force choices between paying for fuel or paying for food. The Low-Income Energy Assistance Program wisely prevents younger and older Americans from making such draconian choices.

In closing, Mr. President, we know that millions of Americans have joined the ranks of the poor since 1979. The biggest number of these Americans have been children. More alarming still is the fact that many such children come from two-parent homes where one parent is working full time, year round. Since 1978, two out of every three children added to the poverty rolls come from homes with working parents. The legislative package I join in sponsoring today will provide many of these children and their families with critical supports, from Head Start, to child care, to community services, to energy assistance. I urge my colleagues to support this legislation as an important step toward giving such children and their families a headstart.●

● Mr. RIEGLE. Mr. President, I am pleased to join with my colleagues today in cosponsoring S. 2444, a bill to reauthorize the Dependent Care Block Grant Program, Head Start, the Low Income Home Energy Assistance Program, the Child Development Associate Scholarships, and the Community Services Block Grant Program. The programs that are reauthorized in this legislation play a vital role in providing for the care and education of our Nation's children, as well as providing critical services to low-income persons.

I am particularly pleased that this legislation reauthorizes the Dependent Care Grants Program because of the difficulties we have encountered in getting this program started. Mr. President, almost 2 years ago, Congress authorized this program in an attempt to address the tremendous problem that working parents face in finding suitable before and after school care for their children. We appropriated funds to get this program under way in December 1985, and the President signed the appropriation bill into law.

Since that time, Mr. President, the administration proposed a rescission of these funds, and HHS delayed promulgating the regulations until the end of April. HHS has finally issued the regulations for awarding and administering the grants, the States have begun to arrange the required matching funds and approve programs for this year. Because the regulations were released so late in the year, however, the program will barely be under way when the current authorization expires. Reauthorizing the program will provide the time and funds that are required to fully evaluate the effectiveness of this program.

Mr. President, finding suitable before and after school care is a serious problem for American families. In the intervening years since the program was authorized the number of so-called latchkey children has continued to grow because before and after school care is simply not available to meet the needs of working parents. Some estimate that as many as 20 percent of all children may be responsible for self-care while their parents are at work. This situation poses unconscionable risk to our children and creates needless worry for their parents. I believe that it is essential that we reauthorize this program so that we can begin to help working parents devise solutions to the critical shortage of before and after school child care.

Other programs in this package, such as Head Start and other community service programs, have a well-documented history of success which provides compelling reasons for our continued support. The LIHEAP Program, for example, has proved to be an enormously effective way of ensuring that low-income persons have sufficient fuel to protect them from the extremes of the weather. Regardless of the ups and downs in the world oil market, we ought to be able to provide people with sufficient heat in winter—this is fundamental to maintaining the quality of life in our communities.

Mr. President, I urge my colleagues to support this legislation. These programs provide invaluable assistance that is needed to keep our communities vibrant, safe, and stimulating places for American children.●

By Mr. MURKOWSKI (for himself, Mr. SIMPSON, and Mr. THURMOND):

S. 2445. A bill to amend title 38, United States Code, to improve certain Veterans' Administration health-care programs; to the Committee on Veterans' Affairs.

VETERANS' HEALTH CARE PROGRAMS IMPROVEMENTS ACT

● Mr. MURKOWSKI. Mr. President, as chairman of the Senate Committee on Veterans' Affairs, I am introducing today, with my colleagues Senator ALAN SIMPSON and Senator STROM THURMOND, the proposed "Veterans' Health-Care Programs Improvements Act of 1986." As we are all aware, health care in this country is changing at a rapid pace. Health-care policymakers, administrators, and clinicians are initiating cost-containment efforts which are resulting in changes in health services delivery, utilization patterns, lengths of hospital stays, and hospital occupancy rates. At the same time, our general population, including our veteran population is aging.

Public and private sector efforts abound to seek to ensure that the medical, social, and financial needs of our elderly are taken care of. Because of these cost-containment efforts and the variety of needs of a growing number of persons over the age of 65, health-care providers have had to develop new incentives, including appropriate kinds, levels, and modalities of care which are cost-effective and humane.

The Veterans' Administration should be a leader in planning for and responding to these dramatic changes. This legislation is intended to provide the VA with increased flexibility to respond to these changes in new and innovative ways within the framework of the existing comprehensive medical-care system.

SUMMARY OF PROVISIONS

Mr. President, the substantive provisions of the bill would;

First, provide the VA with the authority to furnish respite care to chronically ill veterans,

Second, provide the VA with the authority to furnish hospital-based home care and community-based, health-related services to certain veterans,

Third, clarify the VA's authority to provide community-based psychiatric residential treatment for chronically mentally ill veterans,

Fourth, provide the VA with the authority to hire certain psychologists to conduct research,

Fifth, expand the definition regarding the VA's operating beds requirement,

Sixth, require the VA to develop criteria and procedures for prioritizing State veterans home construction projects, and

Seventh, require the VA to establish an ionizing radiation registry.

The three major provisions of the bill, which I will discuss now, would provide the VA with additional authority and increased flexibility to use certain alternative services to help keep veterans at home or in the community as long as possible.

RESPITE CARE

Mr. President, section 2 of the bill I am introducing today would provide the VA with the discretionary authority to furnish respite care to chronically ill veterans. Respite care would be furnished by a VA facility on an intermittent or temporary basis to a chronically ill veteran residing primarily at home. The goal is to provide a brief break for the veteran's caregiver or family from the constant, and in some cases, long-term responsibility of caring for the veteran. This relief is intended to provide an incentive to the veteran and the family for the veteran to continue to reside at home as long as is medically advisable and otherwise feasible.

While current law does not provide the VA with specific authority to provide respite care, a number of respite care services have been developed informally and are provided on a limited basis by certain VA psychiatry, hospital-based home care, and nursing home programs. The VA's August 1984 planning document "Caring for the Older Veteran" stated that the VA's first objective in developing and carrying out an effective program for the elderly is to provide supportive services to sustain older individual's independence in their own home for as long as possible. The report cites respite care services among the spectrum of nonintrusive sustaining care services.

In April 1985 the VA submitted to the Congress a draft bill to authorize the Administrator to provide respite care and recommended its prompt enactment. Last year the House passed legislation authorizing VA respite care, but that provision was not part of the final compromise agreement on H.R. 505 which was enacted in December as Public Law 99-166.

I would like to note that since our discussions with the House last year, the VA submitted in August 1985, pursuant to Public Law 98-528, a report, "Care of the Terminally Ill Veteran Patient". The report stated that as part of its efforts to meet the needs of the terminally ill patient, a significant percentage of VA medical facilities provide some form of respite care. The VA's geriatrics and gerontology advisory committee, in its December 1985 report on hospital-based home care, recommended that "a mechanism for respite care should be included as a program component * * *." It is also important to recognize that respite care is offered as part of the Medicare hospice benefit.

Mr. President, some concern has been expressed about the use of nursing home care beds to provide respite care because of the limited supply of these beds and the high demand for them. This provision would address that concern by providing the VA with the flexibility to use acute care, intermediate care, or nursing home care beds to be used for respite care purposes, beds which VA clinicians in their best medical judgment have determined to be available at the time for this purpose.

In addition to being more humane by promoting the veteran's continued independence and delaying institutionalization, respite care may be a cost-effective use of VA resources. Because of the fairly high turnover among certain respite users, due to eventual nursing home placement or death, the VA would be able to accommodate a far greater number of patients over the course of 1 year for the same cost in staff and equipment than if the beds were used for other purposes.

ALTERNATIVES TO HOSPITAL AND NURSING HOME CARE

Mr. President, section 3 of my proposal would provide the VA with the authority to furnish two kinds of services provided to veterans in their own homes: The first, hospital-based home care and the second, health-related services. Hospital-based home care would be furnished, when medically appropriate, by the VA to chronically ill veterans otherwise eligible for hospital and nursing home care. Medical, rehabilitative, social, and nutrition services would be provided in the veteran's home by an interdisciplinary team under the direction of a physician. The purpose of this program is to enable the veteran to remain at home and receive needed services instead of being placed in a nursing home.

The Congressional Budget Office's April 1984 report discusses noninstitutional program alternatives as options for limiting the escalation in costs for care, specifically citing hospital-based home care as one such option. The VA's "Caring for the Older Veteran" report calls for an increased reliance on this program and states it has "proven potential maintaining the elderly individual with a chronic illness in the less expensive home setting, thus reducing the pressure on hospital bed capacity. Equally important, research and practice have indicated that home care can lead to a better medical result for many patients."

The VA's own Hospital-Based Home Care Program allows for the early hospital discharge to their own homes of veterans with chronic illness. Most of these veterans are expected to remain bedbound or housebound. The purpose of the program is to reduce readmissions to the hospital and provide care to patients for whom outpatients care is not feasible. The family provides the necessary personal care and the multidisciplinary team provides the services. With the addition of 4 new programs this year, the VA will have 53 such programs.

Mr. President, because less than one-third of all VA medical centers have these programs, I believe it is important to provide the VA with the flexibility to contract for such services. The VA's geriatrics and gerontology advisory committee, in its December 1985 report, recommended that they be expanded and that new models, including a contract program, be encouraged and developed. The President in his request for funds for VA medical care programs for fiscal year 1987 states that legislation will be proposed to contract for hospital-based home care.

Mr. President, section 3 of my proposal would also provide the VA with the authority to furnish community-based health-related services to certain veterans. This discretionary authority would allow the VA to contract for personal care, homemaker, nutrition, and transportation services to assist veterans eligible for and otherwise in need of community nursing home care who, but because of physical or mental health disabilities, are unable to perform necessary activities of daily living. The VA would be required to give priority for these services to veterans who are service-connected, 65 years of age or older, totally and permanently disabled, blinded, or suffering from dementia, including Alzheimer's disease.

Mr. President, long-term care can be defined as:

> Those services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive, and maintenance services for individuals of all age groups who have chronic physical and/or mental impairments, in a variety of institutional and non-institutional health care settings, including the home, with the goal of promoting optimum levels of physical, social and psychological functioning.

Institutional long-term care is provided by the VA in several different settings—VA nursing homes and domiciliaries, community nursing homes, and State veterans homes. The VA is increasing its number and kinds of long-term care programs, particularly those outside of nursing homes and domiciliaries. These alternative programs for patients who do not require institutional care include community residential care, hospital-based home care, adult day health care, psychiatric day treatment centers, hospice and respite care programs.

In order to complete the VA's comprehensive continuum of long-term care services, this provision would provide the VA with the authority to contract for health-related services. This provision is derived from a provision in S. 876 which was passed by the Senate last year, but which was not agreed to by the House and therefore was not included in Public Law 99-166 enacted last December.

The need for this authority is clear. In 4 years there will be 7.2 million veterans over age 65 and 14 years from now that number will increase to 9 million. For those veterans who, because of a physical or mental disability, have difficulties with the most fundamental activities of personal care—eating, continence, transferring, toileting, dressing, and bathing—human assistance in the home is critical to that person's ability to remain in the home.

For example, in the case of a veteran who has suffered a stroke and whose condition has become medically stable and, therefore, is ready for discharge from the hospital, personal care could make the difference between that person's return home or entrance into a nursing home. If temporary or permanent paralysis resulting from the stroke prevents the veteran from being able to care for his personal needs, the veteran's options are extremely limited—to either home care or nursing home care. Without this authority, veterans such as this one would have no choice but to be admitted to a nursing home. This authority would provide these veterans with an opportunity to stay at home as long as is medically possible.

TREATMENT AND REHABILITATION FOR CHRONICALLY MENTALLY ILL VETERANS

Mr. President, section 4 of the measure I am intorducing today would clarify the VA's authority to contract for psychiatric residential treatment in halfway houses and other community-based facilities. This authority would specify that veterans who are being furnished VA hospital, nursing home, domiciliary or outpatient care could be provided psychiatric residential treatment at VA expense, if it is determined to be medically appropriate and in the best interests of the veteran.

The VA is the largest single provider of care for long-term psychiatric patients in the United States. Nearly one-third of the VA's inpatient population, 34 percent of the VA's nursing home care population, and over 60 percent of the VA's domiciliary patient population have psychiatric diagnoses. The VA's psychiatry and psychology services include inpatient and outpatient care and specialized programs, such as alcohol and drug dependence treatment, day hospitals, day treatment centers, and mental hygiene clinics.

A September 1985 VA Inspector General report, "Audit of VA Psychiatric Inpatient Care," found that conscientious efforts are being made to meet impatient psychiatry program objectives. However, the IG found that 33 percent of the VA's impatients could more effectively be treated in less costly environments. Though the reasons why some patients are not discharged are complex, the primary reason is that alternative programs are not available. Because of a lack of appropriate alternatives, there is a high probability that some of the veterans discharged will be returned to the hospital. Without appropriate alternative treatment programs, the IG concluded, this recidivism is likely to continue.

The VA is in the process of developing a demonstration project to provide a full spectrum of care for long-term psychiatric patients in certain areas. This effort is designed to respond to clinical experiences and research which have conclusively demonstrated that hospital bed-based programs are linited in their responsiveness to many of the chronic psychiatric patients' needs.

Mr. President, I strongly support the VA's efforts in this regard and commend them for their insight and sensitivity concerning the needs of those veterans who suffer from chronic mental illness disabilities. Caring for this patient population is extremely challenging. The deinstitutionalization efforts of the 1950's and 1960's did not succeed in accomplishing the humane goal of providing appropriate levels of care for the chronically mentally ill in a community setting. Though that effort fell short of its goal, many lessons have been learned from those mistakes.

In 1984, the American Psychiatric Association developed guidelines for a successful program of community care for the chronically mentally ill. And now the Veterans' Administration is seeking to initiate its own efforts which has the potential to set a national example of the goals and components of a comprehensive network designed to meet the needs of its chronically mentally ill patient population.

This provision is derived from a provision I introduced last year as part of S. 876 which passed the Senate. However, the measure was not agreed to by the House during the conference with the House on the measure which became Public Law 99-166. It is the case that under current law, the VA has the authority, as part of its authority to provide medical and rehabilitative services, to establish or contract for halfway houses for the chronically mentally ill.

However, I believe it is important at this time to clarify this authority and provide the VA with specific authority to do so. This provision would serve a two-fold purpose: first, to establish this program as a legislative priority and second, to assist the VA in its efforts to develop a comprehensive network for care for chronically mentally ill veterans. I believe this provision would send an important message to the public and private sectors that the needs of these individuals, particularly the opportunity to live in the community if at all possible, should be met.

CONCLUSION

Mr. President, these additional authorities that would be provided by this bill are consistent with the VA's mission to care for the medical and rehabilitative needs of eligible veterans. I believe they would enhance the VA's already comprehensive continuum of care.

The remaining four provisions of the bill relate to a variety of other important issues: research psychologists, the VA's operating beds, the State Veterans' Home Program, and veterans exposed to ionizing radiation. With respect to the provision to require the VA to establish an ionizing radiation registry, I ask unanimous consent that my December 4 letter to the VA requesting the establishment of such a registry and the VA's February 11 response be printed in the Record.

I would welcome additional cosponsors and urge my colleagues' support of this measure when it is considered on the Senate floor.

Mr. President, I ask unanimous consent that the text of this proposed legislation be printed in the RECORD.

There being no objection, the bill and letter were ordered to be printed in the RECORD, as follows:

S. 2445

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCES

SECTION 1. (a) This Act may be cited as the "Veterans' Health Care Programs Improvements Act of 1986".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

RESPITE CARE

SEC. 2. (a) Section 601 is amended by inserting after paragraph (8) the following new paragraph:

"(10) The term 'respite care' means care furnished on an intermittent or temporary basis by a Veterans' Administration facility to a veteran who has been diagnosed as suffering from a chronic illness and who is receiving care primarily in the veteran's home.".

(b) Section 610(a) is amended by striking out "nursing home care," and inserting in lieu thereof "nursing home care or respite care,".

(c) Not later than 180 days after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report describing in detail—

(1) the actions taken before the date of the report, if any, under the authority provided by the amendment made by subsection (b), and

(2) the plans for exercising such authority.

ALTERNATIVES TO HOSPITAL OR NURSING HOME CARE

SEC. 3. (a) Section 610 is amended by adding at the end the following new subsection:

"(h)(1) The Administrator may contract to furnish hospital-based home care, when medically appropriate, to any veteran in lieu of furnishing hospital care or nursing home care to such veteran under subsection (a) of this section.

"(2) The hospital-based home care which may be furnished a veteran under paragraph (1) of this subsection may include medical, rehabilitative, social, and nutrition services.".

(b)(1) Section 620 is amended by adding at the end the following new subsection:

"(g)(1) The Administrator may contract to furnish services described in paragraph (2) of this subsection, in lieu of nursing home care under subsection (a) of this section, to any veteran who, by reason of a functional deficiency resulting from the veteran's physical or mental condition, is unable to perform a necessary activity of daily living but, considering the veteran's disability, does not require nursing home care, as determined by the Administrator.

"(2) The services which may be furnished a veteran under paragraph (1) of this subsection are the services required for the performance of any necessary activity of daily living, and may include personal care, homemaker, nutrition, and transportation services.

"(3) In administering this subsection, the Administrator shall give priority to furnishing services to a veteran—

"(A) who has a service-connected disability;

"(B) who is 65 years of age or older;

"(C) who has a total and permanent disability;

"(D) who, by reason of blindness in both eyes, has only light perception or is in need of regular aid and attendance; or

"(E) who is suffering from dementia, including Alzheimer's disease.

"(4) The total amount which may be paid for services furnished to all veterans under this subsection in any fiscal year may not exceed 60 percent of the cost which would be incurred if such veterans were furnished nursing home care under subsection (a) of this section in such fiscal year. The total of the periods for which services may be furnished to any such veteran under this subsection shall be the same as authorized for nursing home care under subsection (a) of this section.".

(2) The amendment made by paragraph (1) shall not be construed to limit or reduce the nursing home care and adult day health care programs provided in subsections (a) through (f) of section 620 of title 38, United States Code, or to encourage the limitation or reduction of such programs.

TREATMENT AND REHABILITATION FOR CHRONICALLY MENTALLY ILL VETERANS

SEC. 4. (a) Subchapter II of chapter 17 is amended by adding at the end the following new section:

"§ 620B. Community-based psychiatric residential treatment for chronically mentally ill veterans

"(a) For the purposes of this section:

"(1) The term 'case management' includes the coordination and facilitation of all services furnished to a veteran by the Veterans' Administration, either directly or through a contract, including, but not limited to, screening, assessment of needs, planning, referral (including referral for services to be furnished by the Veterans' Administration, either directly or through a contract, or by an entity other than the Veterans' Administration), monitoring, reassessment, and followup.

"(2) The term 'contract facility' means any facility which has been awarded a contract under subsection (b)(1) of this section.

"(3) The term 'eligible veteran' means a veteran who, at the time of referral to a contract facility—

"(i) is being furnished hospital, domiciliary, or nursing home care from the Veterans' Administration for a chronic mental illness disability, or

"(ii) is being furnished such care from the Veterans' Administration for a chronic mental illness disability and is a veteran described in section 612(a)(1)(B) of this title.

"(b)(1) The Administrator, in furnishing hospital, nursing home, and domiciliary care and medical and rehabilitative services under this chapter, may contract for care and treatment and rehabilitative services in halfway houses, therapeutic communities, psychiatric residential treatment centers, and other community-based treatment facilities for eligible veterans suffering from chronic mental illness disabilities.

"(2) Before furnishing such care and services to any veteran through a contract facility, the Administrator shall approve (in accordance with criteria which the Administrator shall prescribe by regulation) the quality and effectiveness of the program operated by such facility for the purpose for which such veteran is to be furnished such care and services.

"(c) In the case of each eligible veteran provided care and services under this section, the Administrator shall designate a Veterans' Administration employee to provide case management services.

"(d) The Administrator may provide in-kind assistance (through the services of Veterans' Administration employees and the sharing of other Veterans' Administration resources) to a contract facility under this section. Any such in-kind assistance shall be provided under a contract between the Veterans' Administration and the contract facility. The Administrator may provide such assistance only for use solely in the furnishing of appropriate services under this section and only if, under such contract, the Veterans' Administration receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Veterans' Administration facility that provided the assistance.

"(e) Not later than 1 year after the date of enactment of the Veterans' Health Care

Programs Improvements Act of 1986, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience under this section. The report shall include the Administrator's evaluation and findings regarding—

"(1) the quality of care furnished to participating veterans through contract facilities;

"(2) any medical advantages that may result from furnishing such care and services to veterans with such disabilities in such contract facilities rather than in inpatient facilities over which the Administrator has direct jurisdiction;

"(3) the effectiveness of the use of contract facilities under this section in enabling the participating veterans to live outside of Veterans' Administration inpatient facilities and to achieve independence in living and functioning in their communities;

"(4) the cost-effectiveness of furnishing such care through contract facilities under this section, including the effect on the average daily census in the Veterans' Administration hospitals, nursing homes, and domiciliary facilities participating in the program (taking into account whether the beds previously occupied by the participating veterans were subsequently occupied by other eligible veterans or remained unoccupied); and

"(5) any plans for administrative action, and any recommendations for legislation, that the Administrator considers appropriate to include in such report.".

(b) The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 620A the following new item:

"620B. Community-based psychiatric residential treatment for chronically mentally ill veterans.".

AUTHORITY TO WAIVE A LICENSURE REQUIREMENT FOR CERTAIN VETERANS' ADMINISTRATION PSYCHOLOGISTS

SEC. 5. Section 4114(d) is amended by striking out "or optometrist," both places it appears and inserting in lieu thereof "optometrist, or psychologist,".

OPERATING BED REQUIREMENTS

SEC. 6. Section 5010(a)(1) is amended—

(1) by striking out "hospital beds and nursing home beds" in the third sentence and inserting in lieu thereof "hospital, nursing home, and domiciliary beds"; and

(2) by striking out "hospital and nursing home beds" in the fourth sentence and inserting in lieu thereof "hospital, nursing home, and domiciliary beds".

STATE HOME GRANTS

SEC. 7. (a)(1) Section 5031(c) is amended to read as follows:

"(c) The term 'construction' means—

"(1) the construction of new domiciliary or nursing home buildings;

"(2) the expansion, remodeling, or alteration of existing buildings for the provision of domiciliary or nursing home care in State homes;

"(3) the remodeling or alteration of existing buildings for the provision of hospital care in State homes; and

"(4) the provision of initial equipment for any such buildings.".

(2) Section 5032 is amended to read as follows:

"§ 5032. Declaration of purpose

"The purpose of this subchapter is to assist the several States (1) to construct State home facilities (or to acquire facilities to be used as State home facilities) for furnishing domiciliary or nursing home care to veterans, (2) to expand, remodel, or alter existing buildings for furnishing domiciliary or nursing home care to veterans in State homes, and (3) to remodel or alter existing buildings for furnishing hospital care to veterans in State homes.".

(b)(1)(A) Subchapter III of chapter 81 is amended by adding at the end the following new section:

"§ 5038. Priority of projects

"(a) Sums available for grants under this subchapter shall be allocated among State home facilities construction projects in accordance with the priority established for such projects pursuant to subsection (b) of this section.

"(b) The Administrator shall prescribe criteria and procedures for determining the priority to be accorded to State home facilities construction projects with respect to which applications have been approved under section 5035 of this title.".

(B) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5037 the following new item:

"5038. Priority of projects.".

(2) Not later than 180 days after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall—

(A) develop, prescribe, and implement the criteria and procedures required by section 5038(b) of title 38, United States Code (as added by paragraph (1)); and

(B) shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report which describes such criteria and procedures and the implementation of the use of such criteria and procedures to establish the priority of construction projects referred to in such section.

(c)(1) Except as provided in paragraph (2), the amendments made by subsection (a) shall take effect with respect to applications submitted to the Administrator of Veterans' Affairs under section 5035 of title 38, United States Code, on or after October 1, 1986.

(2) The amendments made by subsection (a) shall not apply with respect to an application referred to in paragraph (1) if, before October 1, 1986, the applicant furnished any preliminary information to the Veterans' Administration relating to such application in accordance with application procedures established by the Veterans' Administration in administering subchapter III of chapter 81 of title 38, United States Code.

IONIZING RADIATION REGISTRY

SEC. 8. (a)(1) Chapter 57 is amended by adding at the end thereof the following:

"Subchapter III—Special Records

"§ 3321. Ionizing Radiation Registry

"(a) The Administrator shall establish and maintain a special record to be known as the 'Ionizing Radiation Registry' (hereafter in this section referred to as the 'Registry').

"(b) The Registry shall include the following information:

"(1) Subject to subsection (c) of this section, a list containing the name of each veteran who was exposed to ionizing radiation under the conditions described in section 610(e)(1)(B) of this title and—

"(A) has requested hospital or nursing home care; or

"(B) has filed a claim for disability compensation under chapter 11 of this title or pension under section 521 of this title on the basis of a disability which may be associated with the exposure to ionizing radiation; or

"(C) has died survived by—

"(i) a spouse, child, or parent who has filed a claim for dependency and indemnity compensation under chapter 13 of this title; or

"(ii) a spouse or child who has filed a claim for pension under subchapter III of chapter 15 of this title,

on the basis of the exposure of such veteran to ionizing radiation.

"(2) Medical data relating to each veteran listed in the Registry under paragraph (1) of this subsection, including the veteran's medical history, latest health status recorded by the Veterans' Administration, physical examinations, and clinical findings, and a statement describing birth defects, if any, in the natural children of the veteran.

"(3) Data on claims for the compensation and pensions referred to in paragraph (1) of this subsection, including decisions and determinations of the Veterans' Administration relating to such claims.

"(4) An estimate of the dose of radiation to which each veteran listed in the Registry under paragraph (1) of this subsection was exposed under the conditions described in section 610(e)(1)(B) of this title.

"(c) The Registry is not required to contain the name of a veteran described in subsection (b)(1) of this section if the request or claim referred to in such subsection (b)(1) which relates to such veteran was filed before the date of the enactment of the Veterans' Health Care Programs Improvements Act of 1986, and such veteran or the survivor filing the claim (in the case of a claim referred to in clause (C) of such subsection (b)(1)) does not request the Veterans' Administration to include the veterans' name in the Registry.

"(d) For the purpose of establishing and maintaining the Registry, the Administrator shall compile and consolidate relevant information maintained by the Department of Veterans' Benefits and the Department of Medicine and Surgery of the Veterans' Administration, relevant information maintained by the Defense Nuclear Agency of the Department of Defense, and any relevant information maintained by any other subdivision of the Veterans' Administration or the Department of Defense.

"(e) The Secretary of Defense shall furnish the Administrator such information maintained by any agency of the Department of Defense as the Administrator considers necessary to establish and maintain the Registry.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following:

"SUBCHAPTER III—SPECIAL REPORTS

"3321. Ionizing Radiation Registry.".

(b) The Administrator of Veterans' Affairs shall establish the Ionizing Radiation Registry required by section 3321 of title 38, United States Code (as added by subsection (a)), not later than 180 days after the date of the enactment of this Act.

(c)(1) Not later than 1 year after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall analyze the information collected in the Ionizing Radiation Registry and transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives and to the Advisory Committee on Environmental Hazards of the Veterans' Administration a summary of the analysis.

(2) Not later than 90 days after the date on which the Administrator transmits the summary to the Committees referred to in

paragraph (1), the Advisory Committee on Environmental Hazards of the Veterans' Administration shall review the analysis and transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives such comments on the analysis as the Committee considers appropriate.

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, December 4, 1985.

Hon. HARRY N. WALTERS,
Administrator of Veterans' Affairs, Veterans' Administration, Washington, DC.

DEAR HARRY: I am writing to follow up on my remarks during the November 14 Senate Veterans' Affairs Committee hearing on issues relating to veterans who were exposed to ionizing radiation. During the hearing I stated that I intended to request the VA to initiate immediately an Ionizing Radiation Registry.

I am now formally requesting that you establish such a registry to provide an ongoing data base of, first, veterans who, as a result of the enactment of Public Law 97-72, are eligible for VA health care and who use or seek to use the VA health care system and, second, veterans who apply for VA compensation for disabilities allegedly resulting from radiation exposure. I believe it would be useful to the VA, to veterans who were exposed to ionizing radiation, and to the Congress if the registry included information encompassing a full case history of a patient's visit—personal data, medical history, clinical findings, etc.—including the veteran's name, address, medical history, results of any examinations and clinical findings, VA medical facilities involved, as well as information about the veteran's military service, an estimate of radiation exposure, and any other appropriate findings.

The registry should also document any claims filed for VA compensation for radiation-related diseases resulting from participation in the U.S. atomic weapons test program or the occupation of Hiroshima and Nagasaki. This information should document the veteran's participation in the tests or occupation, an estimate of radiation exposure, the veteran's disability or disabilities, and any VA decisions pertaining to any claims made by or on behalf of the veteran, or the veteran's spouse or survivors.

I believe that a compilation of both the veteran's medical and benefits information related to any ionizing radiation exposure experiences would serve to help detect health trends in such veterans and to indicate any specific characteristics of this particular group of veterans. This is especially critical in light of the recent Office of Technology Assessment determination that an epidemiological study of veterans exposed to ionizing radiation, as required by Public Law 98-160, would not be feasible. The compilation of this information would also serve to consolidate information about such veterans collected by the Department of Medicine and Surgery and the Department of Veterans' Benefits. Consequently, it would expedite the exchange of such information for the purposes of eligibility determinations by VA medical facilities for VA health care services and for the claims adjudication process for radiation-related claims. I wholeheartedly support the VA's Agent Orange Registry and the VA's recent announcement of the forthcoming establishment of a Spinal Cord-Injury Registry and would hope that an Ionizing Radiation Registry would serve a similar purpose.

I request that you carefully consider my request and let me know your plans regarding the establishment of such a registry as soon as possible.

Sincerely,

FRANK H. MURKOWSKI,
Chairman.

VETERANS' ADMINISTRATION, OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, DC, February 11, 1986.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In your letter of December 4, 1985, you requested that the Veterans Administration establish a register, first, of veterans who are eligible for care under the authority of Pub. L. No. 97-72 and who use or seek to use the VA health care system and, second, of veterans who apply for compensation for disabilities allegedly resulting from radiation exposure. You further suggested certain forms of data that should be maintained in the register.

The VA has established a method for identifying veterans who apply to the VA for inpatient care under the authority of Pub. L. No. 97-72. This coding system permits us to retrieve from the VA's automated Patient Treatment File summary data concerning the types of health problems that their permanent medical records. This system has undergone refinement since it was initiated such that we can more easily identify the nuclear weapons test participants seeking care from 1985 onward than we could those seeking care earlier. It could not be practical nor cost-effective to attempt to go back through the earlier records in an attempt to ensure that all of the veterans are incorporated in the more refined system.

From the data that we now have available, and on the basis of current information concerning the types fo health problems that might reasonably be anticipated to result from the kinds of radiation exposure the vast majority of the atomic weapons test participants experienced, we do not believe that a medical register of the sort that you propose would be particularly useful or cost effective. However, we will contact the Defense Nuclear Agency which already has some elements of a radiation register to explore the possibility of linking their data with whatever information the VA may have on these veterans.

Concerning the compensation register, we believe that we already have in place a system that substantially meets your suggestion. In 1984, the Compensation and Pension Service of the Department of Veterans Benefits established a Special Issue Rating system (SIRS) which collects data on claims based on exposure to ionizing radiation and includes service dates, source of exposure (nuclear test, occupation force, therapeutic/occupational, and others), the disabilities claimed, the VA's decision on each disability with respect to service-connection, and the date of the latest rating decision. Data entry is accomplished by adjudication personnel at the regional office level.

SIRS does not store the level of radiation exposure for each veteran. For those veterans exposed to radiation as a result of participation in the atomic weapons testing program or with the occupation forces of Hiroshima or Nagasaki, Japan, however, that information can be obtained, as necessary, from the Defense Nuclear Agency which maintains records of radiation dose estimates on all veterans who file claims for VA benefits. Since this information is readily available, it would be duplicative to store that data in SIRS.

We believe that this approach is a most practical one and is one that addresses most of your concerns.

Sincerely,

EVERETT ALVAREZ, Jr.,
Acting Administrator.●

By Mr. CHAFEE (for himself, Mr. STAFFORD, Mr. GORE, Mr. HEINZ, Mr. METZENBAUM, and Mr. LEVIN):

S. 2446. A bill to require the Secretaries of Agriculture and Health and Human Services to enforce certain food labeling requirements for packaged foods sold by certain restaurants; to the Committee on Governmental Affairs.

FAST FOOD INGREDIENT INFORMATION ACT

● Mr. CHAFEE. Mr. President, today I am introducing legislation providing for ingredient labeling of the food served in fast food restaurants. Joining me as original cosponsors are Senators STAFFORD, GORE, HEINZ, METZENBAUM, and LEVIN.

With over 40 million Americans a day—roughly one-fifth of the population—eating in these restaurants, it is critical that we know what we are getting.

Anyone who has ever tried to find out what is in a typical fast food meal knows it is not a simple matter. Last June, a consumer group wrote to 12 major fast food chains asking for ingredient information. Not recipes, mind you, but just lists of ingredients—nothing more than the makers of Coca-Cola, for instance, are required to put on their cans. Thus, the restaurants were not asked to divulge trade secrets, such as proportions or the names of specific flavorings.

Despite this, 6 of the 12 replied that the information requested was confidential. Another two said it was not available. Three others did not reply at all, even to repeated inquiries. Only 1 of the 12 answered the question squarely, providing complete ingredient lists for all its products.

This is clearly unacceptable. Consumers have a right to know what they are eating.

There's nothing radical about fast food labeling. In fact, FDA and USDA—the two agencies with jurisdiction in this area—have acknowledged that they could, under existing laws, require that fast food be labeled. But unfortunately for the consumer, this has not been done.

That leaves us with an anomaly. Fast food is substantially no different from the food you buy in a supermarket. Supermarket food is labeled, but fast food is not. It should be.

The bill I introduce today would require that fast food be labeled in accordance with existing Federal laws. In cases where printing information on a label would be impractical, the

restaurant would be allowed to provide it in some other way—by posting it on a wall chart, for example, or printing it in a brochure.

Fast food labeling would allow consumers to vote with their fast food dollars. They would be able to avoid meals heavy in fat, sugar, and sodium. They would know whether their french fries had been cooked in vegetable oil or in beef fat, and whether their shake contained any real milk or not. And, in the case of allergy sufferers, they could be reasonably certain that their meal would not mean a trip to the emergency room.

In today's highly competitive fast food industry, product labeling would prompt chains to compete on the basis of nutritional value. This kind of competition would be a tremendous boon to public health. Imagine how our diets would improve if the full force of the fast food giants got behind a race to offer the most wholesome food.

Take heart disease, for instance. It is now this Nation's No. 1 killer, claiming the lives of 400,000 Americans every year. But we're not helpless against it: We can reduce our risk by cutting down on sodium, cholesterol, saturated fat, and caloric intake.

We know this. But how do we use it unless we also know the basic components of the food we eat every day?

That is why we have Federal labeling laws. Those laws can and should be applied to fast food: Because it is sold in a packaged form, fast food comes under the coverage of the Food, Drug and Cosmetic Act, the Federal Meat Inspection Act, and the Poultry Products Inspection Act, all of which require that food sold in wrappers or containers bear ingredient statements on product labels.

This legislation has been endorsed by a number of organizations, including the American Heart Association, the American Cancer Society, the National Parent-Teacher Association, the Consumer Federation of America, the American College of Allergists, the Center for Science in the Public Interest, the National Heart Savers Association, and the Public Voice for Food and Health Policy.

Fast food is here to stay, and that's a good thing for millions of busy people. This bill doesn't tell people what to eat, and it doesn't tell restaurants what to serve. It just makes the facts available.

Mr. President, I ask unanimous consent that a copy of the bill appear in the RECORD at this point, together with a series of editorials and statements supporting fast food labeling.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2446

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fast Food Ingredient Information Act of 1986".

TITLE I—RESPONSIBILITIES OF THE SECRETARY OF HEALTH AND HUMAN SERVICES

ENFORCEMENT OF LABELING REQUIREMENTS

SEC. 101. (a) Except as provided in subsection (b), the Secretary shall enforce section 403(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(i)) with respect to the information required by such section to be included on the labels of packaged foods sold for consumption by customers of fast food restaurants.

(b) If the Secretary determines that it is impracticable for fast food restaurants to comply with section 403(i) of the Federal Food, Drug, and Cosmetic Act through the inclusion on the labels of packaged foods of the information required by such section, the Secretary may prescribe regulations which permit such restaurants to comply with such section through the display of such information on notices in conspicuous places in such restaurants or through the provision of such information on other media determined appropriate by the Secretary, such as menu notices, brochures, or food tray liners.

DEFINITIONS

SEC. 102. For purposes of this title—

(1) the term "fast food restaurant" means a restaurant which is part of a chain of 10 or more franchised restaurants;

(2) the term "label" has the meaning prescribed for such term by section 201(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(k));

(3) the term "food" has the meaning prescribed for such term by section 201(f) of such Act (21 U.S.C. 321(f)); and

(4) the term "Secretary" means the Secretary of Health and Human Services.

TITLE II—RESPONSIBILITIES OF THE SECRETARY OF AGRICULTURE

ENFORCEMENT OF LABELING REQUIREMENTS

SEC. 201. (a) Except as provided in subsection (b), the Secretary shall enforce the provisions of—

(1) subparagraph (9) of paragraph (n) of the first section of the Federal Meat Inspection Act (21 U.S.C. 601(n)(9)); and

(2) section 4(h)(9) of the Poultry Products Inspection Act (21 U.S.C. 453(h)(9)),

with respect to the information required by such provisions of law to be included on the labels of packaged foods sold for consumption by customers of fast food restaurants.

(b) If the Secretary determines that it is impracticable for fast food restaurants to comply with the provisions of law specified in paragraphs (1) and (2) of subsection (a) through the inclusion on the labels of packaged foods of the information required by such provisions of law, the Secretary may prescribe regulations which permit such restaurants to comply with such provisions of law through the display of such information on notices in conspicuous places in such restaurants or through the provision of such information on other media determined appropriate by the Secretary, such as menu notices, brochures, or food tray liners.

DEFINITIONS

SEC. 202. For purposes of this title—

(1) the term "fast food restaurant" means a restaurant which is part of a chain of 10 or more franchised restaurants;

(2) the term "label"—

(A) with respect to a food subject to the Federal Meat Inspection Act, has the meaning prescribed for such term by paragraph (o) of the first section of such Act (21 U.S.C. 601(o)); and

(B) with respect to a food subject to the Federal Poultry Products Inspection Act, has the meaning prescribed by section 4(s) of such Act (21 U.S.C. 453(s));

(3) the term "food" has the meaning prescribed for such term by section 201(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f)); and

(4) the term "Secretary" means the Secretary of Agriculture.

TITLE III—REGULATIONS; EFFECTIVE DATE

REGULATIONS

SEC. 301. Within 6 months after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate final regulations to carry out title I and the Secretary of Agriculture shall promulgate final regulations to carry out title II.

EFFECTIVE DATE

SEC. 302. (a) Except as provided in subsection (b), this Act shall take effect 12 months after the date of enactment of this Act.

(b) Section 301 shall take effect on the date of enactment of this Act.

STATEMENT OF MICHAEL JACOBSON, PH.D., EXECUTIVE DIRECTOR, CENTER FOR SCIENCE IN THE PUBLIC INTEREST

The Center for Science in the Public Interest (CSPI) strongly supports the fast food ingredient disclosure bill introduced today by Senator Chafee. Passage of this legislation will ensure that a vital provision of the federal health laws is enforced. Armed with ingredient information, fast food patrons concerned about diet-related disease and food allergies can make purchasing decisions on the basis of facts.

Ingredient disclosure will enable health-conscious consumers to identify and avoid products that are prepared in frying oils high in saturated fats. In addition, individuals with allergies who currently must play Russian Roulette every time they purchase fast food, will be able to identify and avoid substances to which they are sensitive.

Congressional action is warranted because, in this era of dwindling federal resources, the enforcement priorities of the federal health agencies have been terribly misplaced. While much attention is being directed to "health fraud"—with enforcement actions taken against products such as ripoff baldness cures—the Food and Drug Administration (FDA) and the Department of Agriculture (USDA) intend no action to bring packaged fast food in compliance with the mandatory ingredient disclosure requirements of federal law.

Last June, CSPI and other health and consumer groups petitioned FDA and USDA to enforce the mandatory ingredient labeling provisions of their respective statutes for packaged fast food. USDA denied the petition last December, while FDA has so far failed to respond. FDA and USDA have failed to order labeling despite their joint determination, recently reaffirmed by USDA, that mandatory labeling of fast food is required by federal law. Thus, unless Senator Chafee's bill is enacted, the contents of the $50 billion of fast food sold this year will remain a mystery to the public.

The fast food industry has historically competed on the basis of marketing gimmicks such as "Herb" and the "McDLT." It would be refreshing, to say the least, if some of the millions of dollars the industry spends annually on marketing and promo-

tion could be used to compete on the basis of health and nutrition. We know this is possible because there are nutritious alternatives to the standard high-fat, high-sodium, high-calorie fast food fare. Salad bars, baked potatoes, and roast chicken sandwiches are a few of the healthier offerings that could be the centerpiece of marketing campaigns designed to bring attention to healthful foods and healthful ingredients.

Left to their own devices, FDA, USDA, and the industry would prefer to keep the lid on fast food ingredients. We urge Congress to lift that lid by swiftly enacting Senator Chafee's legislation.

THE AMERICAN COLLEGE OF ALLERGISTS,
Mt. Prospect, IL, May 7, 1986.

The American College of Allergists strongly supports Sen. John H. Chafee's proposed legislation requiring ingredient labeling of fast food products . . . and urges you to join in its co-sponsorship.

As practicing allergists, we have treated many thousands of patients with severe, sometimes life-threatening reactions to hidden ingredients in restaurant foods. Our patients should not have to play Russian Roulette—not knowing whether a Big Mac or Whopper will trigger an allergic reaction—every time they eat a fast-food meal.

The situation is serious.

Sulfites used to freshen fruits and vegetables in salad bars and other places have caused violent asthma and death in some individuals. F.D.C. yellow dye #5, used to color foods, also may cause such reactions.

M.S.G. (monosodium glutamate) can cause flushing, headache and wheezing.

Foods which individuals are commonly allergic to—such as milk, nuts, fish, wheat, soybeans, eggs and corn—may be served in a disguised manner in restaurants and fast-food stores . . . posing a serious threat to unsuspecting allergic patients. Just this winter the New York Times reported that a college student from Brooklyn, who was allergic to peanuts, died after eating chili in a restaurant. Of all things, the chili contained peanut butter used as a thickening agent. She has a severe allergic reaction, resulting in death.

Sen. Chafee's proposal would arm these patients with the vital information they need to protect themselves against potentially life-threatening reactions. That's why we urge you to join Sen. Chafee as a cosponsor of this important legislation.

Thank you for your efforts on behalf of all allergic patients.

Sincerely,

PETER B. BOGGS, M.D.,
President.

[From the New York Times, Nov. 15, 1985]

RISK SEEN IN SATURATED FATS USED IN FAST FOODS

(By Irvin Molotsky)

WASHINGTON, Nov. 14.—A consumer organization said today that eight of the country's largest chains of fast-food and family restaurants cooked their french fries and other foods in beef fat, which is high in the saturated fats that researchers say can contribute to heart disease.

The organization, the Center for Science in the Public Interest, said an absence of labeling laws had left most consumers unaware that the beef fat, or tallow, mixed with a little vegetable oil, was being used by the chains—Arby's, Bob's Big Boy, Burger King, Dairy Queen, Hardee's, McDonald's, Popeyes and Wendy's.

"Most people are shocked that these restaurants use beef fat," Dr. Michael Jacobson, executive director of the consumer organization, said.

Where tested, Howard Johnson's was found to use palm oil, which is even higher in saturated fats than beef fat. A Howard Johnson's spokesman said the chain used vegetable oil in company-owned restaurants but did not stipulate which oil franchises should use.

Dr. Tazewell Banks, a professor of medicine and director of a heart program at D.C. General Hospital, said many parents were unwittingly exposing their children to the increased likelihood of heart disease by allowing them to eat at fast-food outlets.

"It would be safer if they told their children, 'Go out and play in traffic,'" he said at a press conference.

Dr. Jacobson said his organization had asked the restaurant chains why they used beef fat. "Restaurants tell us they think it scores better in customer taste tests," he said. "It also costs less than vegetable oil."

On the other hand, Dr. Jacobson said, companies that fry foods in vegetable oil say they do so to keep beef flavor out of their french fries and fried chicken.

WHERE TESTS WERE DONE

The fast-food chains that used moderately hydrogenated vegetable oil for food frying were listed by the consumer organization as Denny's, Friendly's and Papa Gino's. Hydrogenation makes oil more stable and less likely to spoil. The less hydrogenated oil is, Dr. Jacobson said, the less saturated the fat is.

The chains using heavily hydrogenated vegetable oil, that is, more saturated, were identified as Church's, D'Lites, Kentucky Fried Chicken, Long John Silver, Red Lobster and Rustler.

The analysis on the fat content was conducted by gas chromatography by Dr. Frank Sacks, assistant professor of medicine at the Harvard University Medical School and director of the Lipoprotein Metabolism Research Laboratory at Brigham and Women's Hospital.

Dr. Jacobson said the samples were obtained in the Boston area but were representative of entire chains.

For Dairy Queen, however, uniformity proved not to be the case. The sample obtained in Boston was found to be fried in vegetable oil. When the Center for Science in the Public Interest inquired, it was told that beef fat usually was used and that the Boston outlet had substituted vegetable oil on its own.

The tests were performed on french fries so that the findings would not be affected by the fat content of chicken or other foods. "Many restaurants use the same shortening to fry most foods," the consumer organization said. "Thus, these figures probably also apply to pies, chicken parts and nuggets, fish and other fried foods."

Also participating in the project was Dr. William Castelli, medical director of the Framingham Heart Study, a Massachusetts inquiry that has been going on for 36 years.

Dr. Castelli said that fat in the diet was clearly a major cause of heart disease. "We have to get the fat out of our diet," Dr. Castelli declared.

Restaurant chains were asked to comment, and Frank Belatti, a vice president at Arby's, said his company used both partly hydrogenated soybean oil and a mixture of beef fat and cottonseed oil. "The animal vegetable oil gives the french fry its distinctive fried flavor," he said.

Mary Maguire, a spokesman for the Marriott Corporation, which runs both the Roy Rogers and Bob's Big Boy chains, said that a mix of 90 percent animal fat and 10 percent vegetable oil was used because it had "the most preferred taste profile."

Terri Capatosto, a spokesman for McDonald's, said, "What we use is the highest quality of a vegetable and beef shortening." She said cost was not a factor in the choice of oil.

Denny Lynch, a spokesman for Wendy's, said his company's french fries were cooked in a blend of animal and vegetable fats but would not give the percentage. "We are in the business of selling foods that the customer wants to buy," he said. "There is a lot of money spent on how to cook the perfect french fry."

FAST-FOOD FATTY ACIDS

	Saturated	Unsaturated
Moderately hydrogenated vegetable oil:		
Denny's	18.9	69.3
Friendly's	17.4	70.8
Papa Gino's	15.7	70.0
Heavily hydrogenated vegetable oil:		
Church's	27.4	59.2
D'Lites	31.2	55.3
Kentucky Fried Chicken	26.1	60.1
Long John Silver	28.2	58.0
Red Lobster	24.6	61.3
Rustler	30.5	56.3
Beef fallow (may have some vegetable oil):		
Arby's	49.8	38.7
Bob's Big Boy	47.9	39.2
Burger King	48.8	37.6
Dairy Queen	NA	NA
Hardee's	48.2	40.6
McDonald's	45.5	42.1
Popeyes	47.2	39.4
Wendy's	47.1	39.8
Palm oil:		
Howard Johnson's	53.3	42.2

Note.—Percentage of fatty acids that were found to be saturated and unsaturated. Figures do not total 100 percent because of portion of sample lost in testing.

Source: Center For Science in the Public Interest.

STATEMENT BY THE AMERICAN HEART ASSOCIATION IN SUPPORT OF LEGISLATION ON INGREDIENT LABELING ON FAST FOOD PRODUCTS

The American Heart Association supports legislation introduced today by Senator John H. Chafee (R-RI) on ingredient labeling of fast foods.

The AHA supports this important legislation for three main reasons. First, the AHA believes that most fast food served today is not heart-healthy, because it increases one of the major risks of coronary heart disease. Second, heart and blood vessel disease are this country's number one killers, and any effort in reducing the public's risk of these diseases promises a substantial reduction in mortality and morbidity, as well as health care costs. And finally, the fast food industry may be taking advantage of the fact that at least two federal agencies, the USDA and the FDA, may not be enforcing provisions in existing laws that extend to fast food sold in wrappers or containers.

WHY IS FAST FOOD NOT HEALTHY FOR THE HEART?

For 25 years the AHA has been advising physicians and the public about the merits of a low-fat, low-cholesterol diet as a means of reducing one of the major risks of coronary heart disease, but the typical burger, fries and shake is anything but low-fat or low-cholesterol. The AHA also advocates a moderate intake of sodium to help control high blood pressure in many people, but the amount of sodium in our fast food is clearly alarming.

As a result, for the 40 million Americans who eat in these restaurants every day, "eating on the run" has become synonymous with "eating for clogged arteries and high blood pressure." The problem is that fast food consumers don't know what they are eating.

The AHA's diet statement, which was first issued 25 years ago, has been repeatedly supported by years of research. The studies have led to two well established facts: (1) dietary saturated fats and cholesterol directly raise the total cholesterol in the blood, including a bad variety of cholesterol; and (2) excess fats and cholesterol in the blood contribute to clogged arteries and eventually coronary heart disease.

The AHA dietary statement recommends: (a) a caloric intake to maintain ideal weight; (b) a total fat intake limited to 30 percent of total calories, with no more than 10 percent saturated fat (such as animal fat), up to 10 percent polyunsaturated fats (such as vegetable fats) and 10 percent monounsaturated fat; (c) a dietary cholesterol intake to be no more than 300 mgs per day; (d) carbohydrates (44-55 percent of total calories) primarily selected from the complex varieties; and (e) a reduced sodium intake to help control high blood pressure.

How does the dietary statement translate into daily eating habits? The following explanation will serve to put the statement in perspective.

The AHA dietary guidelines for healthy Americans recommend the reduction of dietary cholesterol to less than 300 mgs per day. According to the Food and Nutrition Board, the estimated safe intake of sodium is 1100 to 3300 mgs of sodium—a generous serving—for healthy adults. An Egg McMuffin breakfast adds up to 340 calories, about 259 mgs of cholesterol, 885 mgs of sodium and 1,580 mgs of fat.

As a result, the Egg McMuffin consumer has had nearly the full amount of cholesterol recommended by the AHA and a substantial amount of the recommended sodium intake in one meal alone. Add lunch, dinner, alcohol and snacks to the daily eating habit, and the same consumer who started with an Egg McMuffin has substantially exceeded the recommended cholesterol and sodium intake for a day.

Does the consumer know that? We don't believe so. But the consumer should know that. And it is not just a question of Egg McMuffins. The Whoppers, the Bacon cheese burger, the fried chickens, and the french fries are equally as bad. The consumer should also know the amount of saturated fat in fast food. But the fast food chains don't disclose that.

Overall, according to the USDA, Americans are eating a healthier diet today than they were in the early 1960's when cardiovascular mortality was at its peak. But there are a few alarming trends.

One is the skyrocketing consumption of highly saturated fat cheese, a favorite of the fast food crowd. Sales have jumped more than 131 percent over the past 20 years. The USDA has also reported that consumption of fat from animal sources in the form of lard, baking and frying fats—all saturated and often used in fast and convenience foods—increased, while vegetable oil—the acceptable kind—decreased.

The AHA believes that the sheer volume of fast food consumed in this country puts a responsibility on fast food chains for educating the consumer. According to estimates from a recent issue of the Boston Globe, the fast food industry represents $44.8 million of this country's "eating-out" budget. Consumers are buying a lot of cholesterol, fat and sodium with their food dollars, and don't even know it.

THE MAGNITUDE OF HEART DISEASE

The three major risk factors of heart and blood vessel disease are: cigarette smoking, uncontrolled high blood pressure and excess serum cholesterol. Fast foods increase the risk of heart and blood vessel diseases by contributing to two of the three risk factors.

How many Americans are affected by these diseases and how does the disease affect them? The following numbers will highlight the magnitude of the problem:

(a) More than 92 million American adults have blood cholesterol levels above 200 mgs/dl, a level at which the risk of heart disease begins to rise sharply.

(b) About 27 million adults have blood cholesterol levels about 260.

(c) Obesity, which is related to blood cholesterol levels, increased 54 percent in children aged 6-11, and 30 percent in children aged 12-17, during the period between 1963 and 1980.

(d) Superobesity increased 90 percent in the 6-11 years olds and 64 percent in the 12-17 years olds during the same period.

(e) Almost 55 million American adults have high blood pressure or are being treated for it.

(f) An additional 2.7 million children aged 6-17 also have high blood pressure.

Because fast food chains appeal to a broad segment of the population, including children, and young and middle-aged Americans, we may have a whole new generation of individuals headed for heart disease.

CURRENT LAWS REQUIRING LABELING OF FAST FOODS

The Federal Food, Drug, and Cosmetic Act requires that all foods regulated by the FDA that are sold in wrappers or containers bear ingredient statements of product labels. There are similar provisions in food products regulated by the USDA.

In 1979, both these agencies concluded that existing laws requiring labels extended to fast foods sold in wrappers or containers. However, both agencies decided not to enforce those laws for any restaurant food, though they indicated that they would reexamine this policy in the future if needed.

The AHA believes that the time has come for these two agencies to reexamine their policies. But even if they do, Sen. Chafee's legislation will strengthen their authority to require ingredient labeling on fast food.

The proposed legislation is also supported by the U.S. Public Health Service's reports on "Promoting Health/Preventing Disease." The four objectives in that report, which directly relate to this legislation, are:

(a) By 1990, the proportion of adults aged to 74 with mean serum cholesterol above 230 mg/dl should be reduced by at least 50 percent;

(b) By 1990, the average daily sodium intake by adults should be reduced at least to the 3 to 6 range;

(c) By 1990, 70 percent of the adults should be able to identify the major foods which are: low in fat content, low in sodium content, high in calories, high in sugars, good sources of fiber; and

(d) By 1990, the labels of all packaged foods should contain useful and nutrient information to enable consumers to select diets that promote and protect good health. Similar information should be displayed where nonpackaged foods are obtained or produced.

Because of these reasons, we believe that Sen. Chafee's legislation is both timely and reasonable. It will also help educate consumers in reading and understanding labels, make wiser choices with their food dollars, and ultimately reduce their risk of developing heart and blood vessel diseases.

EXCERPT: HEARING ON THE FISCAL YEAR 1987 APPROPRIATIONS BILL FOR THE FOOD AND DRUG ADMINISTRATION

FAST FOOD INGREDIENT LABELING

The Federal Food, Drug, and Cosmetic Act requires that all foods regulated by FDA that are sold in wrappers or containers bear ingredient statements on product labels. 21 U.S.C. § 343(i). Similar requirements are contained in the Federal Meat Inspection Act, 21 U.S.C. § 601(n)(9) and the Poultry Products Inspection Act, 21 U.S.C. § 453(h)(9) for meat and poultry products regulated by the U.S. Department of Agriculture (USDA).

With the advent of nationwide chains of franchised fast food restaurants in the 1950s and 1960s, the manner in which much restaurant food is prepared and served has drastically changed. Each of the thousands of fast food establishments is now akin to a small, decentralized food manufacturing facility. The composition of the products is highly standardized; the variety of foods is limited; and most, if not all, foods are served in wrappers that could easily accommodate ingredient information.

In 1979, FDA and USDA concluded that their statutes' mandatory ingredient labeling provisions extend to fast foods that are sold in wrappers or containers. Food Labeling Background Papers, p. 13 (1979). However, the agencies decided not to enforce those laws for any restaurant food, though they indicated that they would reexamine this policy in the future if needed. (44 Fed. Reg. 76,000 (1979))

Today, with Americans spending nearly $50 billion a year in fast food restaurants, fast foods provide a significant portion of the diets of millions of people. A variety of health problems associated with the ingredients in fast foods makes the disclosure of those ingredients imperative. Hundreds of thousands of Americans are allergic to fast food ingredients such as FD&C Yellow Dye No. 5 and corn-based sweeteners. Many others need to avoid certain ingredients, such as animal fats, and coconut and palm oils, to reduce their risk of heart attack and other diet-related diseases. Ingredient disclosure is the only device that can enable these consumers to safely eat fast foods.

FDA and USDA publicly acknowledged the importance of label disclosure of restaurant ingredients to persons who are allergic to ingredients. In the Food Labeling Background Papers, the agencies stated:

"Sufferers of allergies and persons following special diets would benefit from ingredient labeling of restaurant foods . . . while the actual impact upon health is rather uncertain, the number of people who may more easily be able to deal with their health problems may be significant." (FLBP, p. 13.)

More recently, FDA wrote the Bureau of Alcohol, Tobacco and Firearms (BATF) and urged BATF to require the disclosure of alcholic beverage ingredients. FDA stated:

"Once sensitivity to ingested substances has been confirmed, however, the most effective way of dealing with the problem is to avoid those substances. *Because many ingredients may be concealed in prepared products, reliance on ingredient declaration may be the only practicable means for consumers*

to avoid offending substances." (Memorandum from Joseph P. Hile, FDA associate Commissioner for Regulatory Affairs, to BATF, July 20, 1983 (emphasis added).)

Furthermore, the principle of mandatory ingredient labeling has widespread public support. The Heritage foundations, a conservation think-tank, in its book "Mandate For Leadership II," states:

"The mandatory disclosure of certain information may also prove an effective means of achieving regulatory goals. Requiring food processors to disclose the use of certain additives, for example, allows consumers to make a more intelligent choice . . ." ("Mandate For Leadership II," The Heritage Foundation (1984), p. 421.)

For these reasons, and in particular because of the great concern the public now has over sensitivity to food ingredients and diet-related diseases, CSPI petitioned FDA and USDA last June and urged the agencies to abandon their historical indifference to restaurant ingredient labeling and enforce the labeling provisions of their respective statutes for fast foods served in packaged form. See Attachment 1. Co-petitioners and endorsers included the New York State Consumer Protection Board, the American College of Allergists, and the American Dietetic Association. In addition, thousands of consumers and over 100 health experts have expressed their support for ingredient disclosure to the government. USDA denied the petition in December, 1985. FDA has not yet responded to the petition.

Several members of Congress have expressed concern over the government's failure to enforce this vital provision of federal law. Following the tragic death of a young woman with an allergy to peanuts, who died after she unknowingly consumed peanut butter that was added to a restaurant's chili, Senator John Chafee indicated that ingredient information should be available to restaurant patrons. Congressional Record, March 27, 1986, p. S3756. In addition, after USDA denied the petition, Congressman Stephen Solarz wrote then-Secretary Block and started that he was "troubled by USDA's denial of the petition." See Attachment 2.

We urge this committee to require FDA to issue a report to the committee within the next several months on the status of the petition. The committee should also express its concern over FDA's and USDA's failure to enforce their statutes' mandatory ingredient disclosure requirements.

[From the New York Times, Apr. 4, 1986]

WHAT'S THE BEEF?

Consumers' ignorance about fast food is hazardous to their health. Yet the Federal Government resists efforts to require the preveyors of burgers, fries and shakes to disclose their ingredients. It's therefore up to the states to mandate disclosure. New York's Consumer Protection Director, Richard Kessel, responds with a sensible proposal.

The Federal Ingredient Label Law already requires disclosure on pre-packaged foods sold in supermarkets. The Federal Department of Agriculture has refused to apply that law to the standardized products sold by fast-food chains, contending this would create an unfair burden.

But the burden on consumers is greater. The Center for Science in the Public Interest has found that eight of the largest fast-food chains cook french fries and other foods in beef tallow, a flavorful shortening that is high in saturated fats. And a study sponsored by Science Digest found that the chicken sandwich widely thought to be low in fat may contain as much fat as a pint and a half of ice cream. The artificial preservatives and food colorings used in fast food are of interest to allergy suffers.

More than 100 scientists and deans of medical and health schools recently petitioned major fast-food chains to stop using heavily saturated fats and to disclose their ingredients. But the National Restaurant Association objects that listing ingredients on fast food wrappers or menus would cause "undue anxiety" among customers. The chains ask consumers to write for the information.

About 46 million people a day are served at fast-food restaurants. Forcing disclosure would stimulate the chains to compete on the basis of content as well as taste. Mr. Kessel proposes a New York law demanding disclosure on food wrappers or counter signs or in a brochure available where food orders are taken. The costs would be minimal, the benefits substantial. An industry that feeds a fifth of the nation's appetites should not also feed its suspicions.

[From the New York Times, Jan. 2, 1986]

LET PEOPLE KNOW WHAT THEY'RE EATING

(By Michael F. Jacobson)

Imagine a $50 billion-a-year campaign to sabotage Americans' health. Though it would never admit it, that is essentially what the fast-food industry is doing with its slick merchandising of products dunked in fat and laced with salt. While it may be unrealistic to expect fast-food restaurants to adopt a completely healthful menu, is it too much to ask that they label product ingredients so that consumers can at least make informed choices about what they eat?

Actually, current Federal regulations call for ingredient labeling of packaged foods, but there is some question whether this applies to fast-food restaurants. Last month, the Agriculture Department rejected a petition filed by several consumer health groups to extend labeling requirements to meat and poultry products served in fast-food restaurants, contending that the practice would be expensive, cumbersome and unnecessary. A similar petition is now pending before the Food and Drug Administration, which is responsible for most fast-food products besides meat and poultry.

A food's ingredients help determine its nutritional worth. Only a Rip Van Winkle could be unaware that excessive fats, cholesterol and sodium in the American diet contribute in a major way to high blood pressure and coronary heart disease. Fats also appear to promote cancers of the breast, colon and other organs.

Eat a quarter-pound burger, fries and a shake and you will ingest an artery-clogging 15 teaspoons of grease. That is approaching the maximum amount of fat that the average person should consume in an entire day. Even chicken and fish, the low-fat foods the experts say we should eat, will probably be deep-fried and loaded with fat at your local speed eatery. For instance, at McDonald's a small order of Chicken McNuggets or a filet-of-fish sandwich has about twice as much fat as a regular hamburger.

What is worse, many restaurants—including McDonald's, Burger King and Hardee's—fry foods in almost pure beef fat rather than in liquid vegetable oil. Not only are the potatoes, chicken and fish laden with fat, but the fat they absorb is also highly saturated.

As if that were not bad enough, the high sodium content of fast-food meals promotes high blood pressure. One out of every two Americans develops hypertension by the age of 65. High blood pressure triggers strokes and heart attacks in hundreds of thousands of people annually.

The National Academy of Sciences recommends that adults consume between 1,100 and 3,300 milligrams of sodium (one-half to one and a half teaspoons of salt) per day. A single Burger King Whopper or similar sandwich contains about 1,000 milligrams of sodium. Many fast-food meals easily supply a whole day's ration of salt.

Consumers could make better choices among fast foods if they were able to compare the ingredients these foods contain. But not one fast-food company lists ingredients on its food wrapper. Most will not even respond to phone calls and letters requesting this information.

Without ingredient listings, how can consumers "vote" at the cash register against Chicken McNuggets (which contain ground-up chicken skin and are fried in beef fat)? How can consumers avoid yellow No. 5, the allergy-triggering dye—found in some milk shakes and other fast foods—that the F.D.A. requires to be listed by name when used in packaged grocery products?

The restaurant industry is totally opposed to labeling requirements. Such labeling "would create undue anxiety," says the National Restaurant Association.

In truth, consumers would be upset if labels on restaurant foods revealed the presence of "ground up chicken skin," "sulfur dioxide" or "yellow dye No. 5." And that's precisely the benefit of ingredient information. Its mere presence would drive some of the most nutritionally worthless products right off the market.

Industry representatives also contend that labeling would be both prohibitively expensive and impractical. Granted, listing ingredients on packages would impose some minor expense on chains, as it does now for grocery manufacturers. But the cost would be small compared to the health benefits, and minuscule compared with the chains' billion-dollar-a-year advertising barrage.

As for practicality, many products already come in unique packages. And restaurants could easily list the ingredients of several varieties of sodas and milk shakes on the same cup.

Meals that promote life-threatening diseases, double-barreled ad campaigns that target children, and a level of secrecy that the C.I.A. must envy—all this reflects poorly on the ethical standards of the people running the corporate giants that are increasingly feeding America.

One of these days, though, the chief executive of a fast-food chain will recognize that people really do want low-cost convenient meals that are healthful, not harmful. That chain would provide nutritious foods, from whole-grained buns to cooked green vegetables to fresh fruits (the salad bars and baked potatoes are welcome steps in this direction). Its hamburgers would be lean and the chicken and fish baked, not fried. The chain would brag about its ingredients and nutrients rather than hiding them, and it would mount a two-fisted comparative advertising campaign that made mincemeat of its competitors.

Such a chain stands to do well by doing good. It would prosper while also helping to keep its customers out of the coronary care unit.

[From the New York Times, Dec. 17, 1985]

NAME THAT FAST FOOD

Fast-food restaurants, a $47 billion industry, supply a large part of the American diet. Yet their consumers have little idea of the ingredients mixed into their burgers, fries and shakes. If they did know, the result might well be a healthy change in the nation's eating habits.

A recent study by the Center for Science in the Public Interest, a consumer-advocacy organization, reported that eight of the largest fast-food chains cook french fries and other foods in beef tallow, which is high in the saturated fats believed to be a leading cause of heart disease. Patrons who order a chicken sandwich to avoid cholesterol may instead get fat and cholesterol equal to 11 pats of butter. Fast-food patrons are also exposed to artificial preservatives and some suspect food colorings. Small wonder the major fast-food chains prefer not to disclose their recipes.

The center, joined by the New York State Consumer Protection Board and others, has petitioned the Food and Drug Administration to apply the Federal ingredient label law to fast-food chains. Their legal argument is that fast-food outlets are less like conventional restaurants and more like retailers of standardized products, "packaged" because they are sold in wrappers. Should that argument fail, the petitioners may seek state regulations.

The fast-food industry recognizes health concerns; witness the recent proliferation of salad bars. Yet it resists disclosure. The National Restaurant Association contends that listing the ingredients on fast-food wrappers or menus would cause "undue anxiety" among patrons. It suggests that people with food allergies or other dietary concerns write to the food companies to obtain specific information.

If forced to disclose, fast-food outlets almost surely would start competing on the basis of content as well as taste. Fast food need not hide behind slow facts.●

ADDITIONAL COSPONSORS

S. 950

At the request of Mr. HEINZ, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 950, a bill to amend the Communications Act of 1934 to promote fairness in telecommunications policy by providing for lifeline telephone service.

S. 1622

At the request of Mr. MELCHER, the names of the Senator from Mississippi [Mr. COCHRAN], and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of S. 1622, a bill to promote the development of Native American Culture and Art.

S. 1661

At the request of Mr. HEINZ, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1661, a bill to amend the Internal Revenue Code of 1954 to exempt certain emergency medical transportation from the excise tax on transportation by air.

S. 1820

At the request of Mr. DECONCINI, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 1820, a bill to provide financial assistance to State and local educational agencies for the development and expansion of demonstration chemical substance abuse prevention programs in the public elementary and secondary schools of such agencies, and for other purposes.

S. 1941

At the request of Mr. DENTON, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 1941, a bill to protect the security of the United States by providing for sanctions against any country that provides support for perpetrators of acts of international terrorism.

S. 1965

At the request of Mr. STAFFORD, the names of the Senator from Oklahoma [Mr. NICKLES], the Senator from Florida [Mrs. HAWKINS], the Senator from Ohio [Mr. METZENBAUM], the Senator from Iowa [Mr. GRASSLEY], the Senator from Massachusetts [Mr. KERRY], the Senator from Kansas [Mr. DOLE], the Senator from Nevada [Mr. LAXALT], the Senator from Texas [Mr. BENTSEN], the Senator from Mississippi [Mr. COCHRAN], the Senator from Tennessee [Mr. GORE], the Senator from Maryland [Mr. SARBANES], the Senator from South Dakota [Mr. ABDNOR], the Senator from Ohio [Mr. GLENN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Georgia [Mr. NUNN], the Senator from Washington [Mr. EVANS], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Vermont [Mr. LEAHY], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Maine [Mr. COHEN], the Senator from Arizona [Mr. DECONCINI], and the Senator from New Jersey [Mr. BRADLEY] were added as cosponsors of S. 1965, a bill to reauthorize and revise the Higher Education Act of 1984, and for other purposes.

S. 2081

At the request of Mr. STAFFORD, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 2081, a bill to reauthorize the Head Start Act, the Low-Income Home Energy Assistance Act of 1981, the Community Services Block Grant Act, for deferred cost care programs, and for other purposes.

S. 2129

At the request of Mr. KASTEN, the name of the Senator from Pennsylvania [Mr. HEINZ] was added as a cosponsor of S. 2129, a bill to facilitate the ability of organizations to establish risk retention groups, to facilitate the ability of such organizations to purchase liability insurance on a group basis, and for other purposes.

S. 2176

At the request of Mr. BOREN, the names of the Senator from Montana, [Mr. BAUCUS], and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 2176, a bill to amend chapter 11 of title 18, United States Code, to prohibit any former high-level Federal civilian officer or employee or high-ranking officer of a uniformed service from representing or advising a foreign principal for a period of at least 5 years after leaving Government service.

S. 2183

At the request of Mr. METZENBAUM, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 2183, a bill to improve services for individuals with Alzheimer's disease and their families.

S. 2206

At the request of Mr. NICKLES, the name of the Senator from North Dakota [Mr. ANDREWS] was added as a cosponsor of S. 2206, a bill to amend the Internal Revenue Code of 1954 to repeal the windfall profit tax on crude oil.

S. 2273

At the request of Mr. KASTEN, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 2273, a bill to amend the Internal Revenue Code of 1954 to deny the tax exemption for interest on industrial development bonds used to finance acquisition of farm property by foreign persons.

S. 2286

At the request of Mr. DECONCINI, the names of the Senator from Hawaii [Mr. MATSUNAGA], and the Senator from Maine [Mr. MITCHELL] were added as cosponsors of S. 2286, a bill to prohibit the sale, donation, or other transfer of Stinger antiaircraft missiles to democratic resistance forces in Afghanistan and Angola unless certain conditions are met.

S. 2327

At the request of Mr. GRAMM, the name of the Senator from Texas [Mr. BENTSEN] was added as a cosponsor of S. 2327, a bill to amend the Low-Income Home Energy Assistance Act of 1981 to specify the method of determining State allotments.

S. 2347

At the request of Mr. BENTSEN, the name of the Senator from Texas [Mr. GRAMM] was added as a cosponsor of S. 2347, a bill to authorize the Corps of Engineers to issue permits under the Clean Water Act and the River and Harbor Act for construction of a water resource project in the State of Texas.

S. 2387

At the request of Mr. DURENBERGER, the name of the Senator from Idaho [Mr. MCCLURE] was added as a cosponsor of S. 2387, a bill to provide relief to

State and local governments from Federal regulation.

S. 2411

At the request of Mr. D'AMATO, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 2411, a bill to prohibit possession, manufacture, sale, importation, and mailing of ballistic knives.

S. 2434

At the request of Mr. HATCH, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 2434, a bill to amend the Public Health Service Act to require the Secretary of Health and Human Services to prepare announcements for television on the health risks to women which result from cigarette smoking.

SENATE JOINT RESOLUTION 311

At the request of Mr. CRANSTON, the names of the Senator from Illinois [Mr. SIMON] and the Senator from Florida [Mrs. HAWKINS] were added as cosponsors of Senate Joint Resolution 311, a joint resolution designating the week beginning November 9, 1986, as "National Women Veterans Recognition Week".

SENATE JOINT RESOLUTION 323

At the request of Mr. D'AMATO, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Joint Resolution 323, a joint resolution to designate May 21, 1986, as "National Andrei Sakharov Day".

SENATE JOINT RESOLUTION 326

At the request of Mr. WALLOP, the name of the Senator from Indiana [Mr. QUAYLE] was added as a cosponsor of Senate Joint Resolution 326, a joint resolution to proclaim May 21, 1986, as "Andrei Sakharov Honor and Freedom Day".

SENATE JOINT RESOLUTION 333

At the request of Mr. ANDREWS, the names of the Senator from Michigan [Mr. LEVIN], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Georgia [Mr. NUNN], the Senator from Nebraska [Mr. ZORINSKY], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Oklahoma [Mr. NICKLES], the Senator from Vermont [Mr. LEAHY], the Senator from North Dakota [Mr. BURDICK], the Senator from Massachusetts [Mr. KERRY], the Senator from Arkansas [Mr. PRYOR], the Senator from South Dakota [Mr. ABDNOR], the Senator from Idaho [Mr. MCCLURE], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Missouri [Mr. DANFORTH], the Senator from Illinois [Mr. DIXON], the Senator from Connecticut [Mr. WEICKER], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Hawaii [Mr. INOUYE], the Senator from Arkansas [Mr. BUMPERS], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of Senate Joint Resolution 333, a joint resolution designating the week of May 18, 1986, through May 24, 1986, as "National Food Bank Week".

SENATE JOINT RESOLUTION 335

At the request of Mr. CHILES, the names of the Senator from Pennsylvania [Mr. HEINZ], and the Senator from Massachusetts [Mr. KENNEDY] were added as cosponsors of Senate Joint Resolution 335, a joint resolution to designate May 8, 1986, as "Naval Aviation Day".

SENATE JOINT RESOLUTION 337

At the request of Mrs. HAWKINS, the name of the Senator from Colorado [Mr. ARMSTRONG] was added as a cosponsor of Senate Joint Resolution 337, a joint resolution designating May 18–24, 1986, as "Just Say No to Drugs Week".

SENATE JOINT RESOLUTION 342

At the request of Mrs. HAWKINS, the names of the Senator from Alabama [Mr. DENTON], the Senator from North Dakota [Mr. BURDICK], the Senator from Idaho [Mr. SYMMS], and the Senator from Georgia [Mr. MATTINGLY] were added as cosponsors of Senate Joint Resolution 342, a joint resolution to designate May 25, 1986, as "Missing Children Day".

SENATE CONCURRRENT RESOLUTION 125

At the request of Mr. HEINZ, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of Senate Concurrent Resolution 125, a concurrent resolution recognizing the achievements of the Ireland Fund and its founder, Dr. Anthony J.F. O'Reilly.

SENATE RESOLUTION 381

At the request of Mr. DECONCINI, the name of the Senator from Florida [Mr. CHILES] was added as a cosponsor of Senate Resolution 381, a resolution expressing the sense of the Senate with respect to United States corporations doing business in Angola.

SENATE RESOLUTION 385

At the request of Mr. SASSER, the name of the Senator from South Carolina [Mr. HOLLINGS], was added as a cosponsor of Senate Resolution 385, a resolution to express the sense of the Senate that certain action be taken to end hunger in the United States by 1990.

SENATE RESOLUTION 392

At the request of Mr. DECONCINI, the names of the Senator from Vermont [Mr. LEAHY], and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of Senate Resolution 392, a resolution expressing the sense of the Senate that the people of the Republic of Korea should be allowed to petition for a constitutional amendment to allow for the direct election of their president.

SENATE RESOLUTION 397

At the request of Mr. QUAYLE, the names of the Senator from Oklahoma [Mr. BOREN], and the Senator from South Dakota [Mr. ABDNOR] were added as cosponsors of Senate Resolution 397, a resolution expressing the sense of the Senate regarding the lending practices of multilateral development banks.

AMENDMENT NO. 1823

At the request of Mrs. KASSEBAUM, the name of the Senator from Pennsylvania [Mr. HEINZ] was added as a cosponsor of amendment No. 1823 intended to be proposed to S. 100, a bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

At the request of Mrs. KASSEBAUM, the name of the Senator from Montana [Mr. MELCHER] was withdrawn as a cosponsor of amendment No. 1823 intended to be proposed to S. 100, supra.

AMENDMENT NO. 1951

At the request of Mr. DANFORTH, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of amendment No. 1951 intended to be proposed to S. 1999, a bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

SENATE RESOLUTION 405—EXPRESSING OPPOSITION TO THE IMPOSITION OF A FEDERAL LICENSING FEE FOR MARINE SPORTFISHING

Mr. LAUTENBERG (for himself and Mr. HOLLINGS) submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 405

Whereas the President has proposed the imposition of a federal licensing fee for recreational marine fishermen, to be implemented by the Secretary of Commerce;

Whereas the Administrator of the National Oceanic and Atmospheric Administration has suggested imposing a similar fee on commercial fishermen;

Whereas the federal revenues raised by the proposed fees would not be contributed to enhancement of fisheries;

Whereas the revenues expected to be raised would far exceed federal expenditures in direct support of recreational fisheries;

Whereas there are over seventy million recreational fishing trips taken along the coastal mainland of the United States annually;

Whereas commercial and recreational fisheries together generate an estimated $27 billion to the nation's economy, and provide employment for an estimated 900,000 individuals;

Whereas imposition of such a fee would discourage growth of the fisheries industries in this country, and harm related industries;

Whereas imposition of such a fee would have adverse impacts on state and local economies: Now, therefore, be it

● Mr. LAUTENBERG. Mr. President, today I am submitting a resolution to express the sense of the Senate opposing the imposition of a Federal fishing license fee for recreational fishermen.

I am pleased to be joined by my distinguished colleague from South Carolina, Senator HOLLINGS, in submitting this resolution.

When the President submitted his budget proposal for fiscal year 1987, he included a recommendation to implement a Federal ocean sportfishing license. This proposal would require recreational fishermen to obtain a Federal license in order to fish off our coasts. The fee would be at least $10, with $5 going to the general treasury, and the remainder to the State in which the license was obtained. The administration proposes to raise $200 million in revenues over the next 5 years through this program. None of the Federal revenues generated from this fee would serve to enhance fisheries.

Fisheries represent an important segment of the economies of coastal States. Over 70 million recreational fishing trips were taken in the coastal waters of the continental United States. Combined, recreational and commercial fisheries generate an estimated $27 billion in the United States, and employ approximately 900,000 individuals.

In my State, New Jersey, fisheries play a vital role in the State's economic well-being. An estimated 1.6 million salt water recreational fishermen reside in New Jersey, while another 1.2 million tourists come to our State each year to fish in the Atlantic coastal waters. There are 800 owners of large charter marine sportfishing charter boats in New Jersey. Recreational fisheries bring in between $300 and $400 million each year to the economy of New Jersey.

Mr. President, the imposition of a Federal ocean sportfishing license on recreational fishermen could have devastating impacts on State and local economies. In New Jersey, an overwhelming majority of those chartering marine fishing vessels do so only once each year. If a Federal fee of at least $10 is imposed in addition to the cost of chartering a vessel, many of these one-time fishermen will find a fishing trip infeasible. The impact of this on charter boat owners, as well as on associated businesses would be severe.

The administration's proposal raised Federal revenues without any benefit accruing to the enhancement and enrichment of fisheries. This proposal attempts to raise Federal revenues at the expense of a small group. The National Marine Fisheries Service directly spends only about $3 million to enhance recreational fisheries annually. The funds raised through this proposal would far exceed Federal expenditures in this area. Mr. President, this amounts to nothing more than a tax increase on recreational fishermen which is being disguised as a user fee.

This proposal is inappropriate, and I hope the administration will not pursue it further. This resolution is meant to put the Senate firmly on record in opposition to the administration's proposal. I am pleased to have Senator HOLLINGS as its original cosponsor, and urge my colleagues to support the resolution.●

● Mr. HOLLINGS. Mr. President, today I join with my colleague Senator LAUTENBERG to submit a resolution expressing opposition to the administration's proposal to implement an ocean sportfishing license.

The plan would impose a fee of at least $10 on the Nation's 17 million recreational anglers who fish in our coastal waters; $5 of that license fee would go the Federal Government. The plan would generate hundreds of millions of dollars in revenue over the next few years.

Some might call this proposal a "user fee." But it is not. If it were, then recreational fishermen could expect to benefit directly from hundreds of millions of dollars in Federal services. Yet look at what they are getting—the National Marine Fisheries Service spends only about $3 million a year on programs that directly enhance and support ocean sportfishing. And the administration wants to slash this agency's budget, to boot.

Ocean sportfishermen, who make more than 70 million fishing trips each year, are already paying for existing programs—through special taxes on the marine fuel and recreational equipment they purchase.

Thus, the administration's fishing license proposal is nothing more than a scheme to fleece the Nation's recreational fishermen of their hard-earned money in order to offset deficits they didn't create.

Mr. President, I have said for years that we can balance our Federal budget if the President and the Congress show the discipline necessary to do it. We've passed the Gramm-Rudman-Hollings law to force us to exercise that discipline. But let us not look to hare-brained proposals such as this ocean sportfishing license to solve our deficit problems. It's not fair, it's not right, and it certainly won't get the job done.●

SENATE RESOLUTION 406—HONORING THE 125TH ANNIVERSARY OF CAMPING IN THE UNITED STATES

Mr. DODD (for himself and Mr. WEICKER) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 406

Whereas, in August of 1861, Frederick William Gunn, Headmaster of the Gunnery School in Washington, Connecticut, set out with his students on a forty-mile excursion to Welches Point on Long Island Sound in the first recorded organized children's summer camping experience in the history of our nation, and;

Whereas, the camp at Welches Point promoted the development and self-discipline of the participants, and was perceived to have been a valuable experience for the young students and adults who pitched tents and lived for two weeks in the out-of-doors, doing their own cooking, fishing, and chores, and enjoying songs and stories by campfire at night, and;

Whereas, since those origins in the late 19th century, organized camping has provided young people with activities designed to promote personal growth and development skills; to encourage positive behavioral change; and to foster the ability to communicate with both other children and adults; and;

Whereas, today over 11,000 camps, in 50 states, serve four million young Americans each year, and;

Whereas, 1986 is the 125th Anniversary of organized camping in the United States;

Resolved, That due honor and recognition be accorded the institution of organized camping in its 125th year of existence, with the acknowledgement of the contributions that organized camping has and continues to offer the youth of America, together with invaluable opportunities for enhanced mental, physical, spiritual, and social development.

● Mr. DODD. Mr. President, today I am submitting with my colleague from Connecticut [Mr. WEICKER] a Senate resolution recognizing and honoring the 125th anniversary of organized camping in the United States. The first organized children's camp was established in 1861 in Connecticut, at Welches Point on Long Island Sound. Since that time, summer camp programs, and the summer camp experience, have become available each year to 4 million young campers throughout all 50 States.

Every State in the Nation currently enjoys established camping programs derived in part from the ideals advanced at Welches Point. With over 11,000 organized camps in the United States today, the summer camp experience has become an important part of millions of young lives, and offers invaluable opportunities for physical, mental, spiritual, and social development.

During the week of July 14, 1986, 125 youths and adults from camps throughout the United States will recreate the historic 40-mile 1861 Connecticut walk. They will be joined in Milford, CT, on July 17, by an additional crowd of some 2,000, for the nationwide great American summer campfire. We wish all participants safety and success in this celebration.

I hope that all Members of the Senate will join me in a tribute to this cornerstone of America's youth in its 125th anniversary.●

AMENDMENTS SUBMITTED

DRUG EXPORT LEGISLATION

METZENBAUM AMENDMENT NO. 1952

Mr. METZENBAUM proposed an amendment to the bill (S. 1848) to amend the Federal Food, Drug, and Cosmetic Act to establish conditions for the export of drugs; as follows:

On page 27, beginning with line 17, strike out through line 7 on page 28 and insert the following:

"(D) in the case of a drug to be shipped to a country on a list established under clause (i) of (ii) of paragraph (2)(A)—

"(i) an application for approval or licensing has been submitted or approved for the drug and the drug has not been the subject to any action by the Secretary or the Secretary of Agriculture denying, withdrawing, or suspending approval or licensing on the basis of safety or effectiveness or otherwise banning the drug; and

"(ii) such application has not lapsed or has not been withdrawn;

GLENN (AND PROXMIRE) AMENDMENT NO. 1953

Mr. GLENN (for himself and Mr. PROXMIRE) proposed an amendment to amendment No. 1949 proposed by Mr. METZENBAUM to the bill S. 1848, supra; as follows:

In lieu of the matter proposed to be inserted, add the following:

SEC. 9. (a) Not later than December 31 of each year, the Director of the Office of Management and Budget shall prepare for the Department of State which, in turn shall provide and inform the public and foreign governments, through their embassies in the United States or other appropriate means, an annual report which summarizes—

(1) all final agency actions taken during the preceding fiscal year with respect to banned or severely restricted substances, and

(2) any additional action taken during the preceding fiscal year with respect to banned or severely restricted substances which were first banned or severely restricted during a fiscal year prior to the fiscal year covered by the report.

(b)(1) No banned or severely restricted substance may be exported from the United States unless—

(A) the person intending to export the substance from the United States provides written notice to the agency reasonsible for carrying out the provision of law specified in subsection (c) which is applicable to the substance, prior to the first shipment to a country after regulatory action, stating such person's intent to export the substance and the intended country of destination; and (d) in addition, notice be made to foreign embassies of all final regulatory actions at the time they are taken.

(B) the agency provides the Secretary of State with a statement concerning the substance which contains—

(i) the name of the substance;

(ii) a summary of any action taken by the agency with respect to the substance, including a description of the grounds for such action and a citation of the statutory authority for such action;

(iii) a description of the determined risks to human health or safety or to the environment that may result from the use of the substance; and

(iv) a specification of the officer or employee of the agency who may be contacted by the government of any foreign country to which the substance is intended to be exported in order to obtain additional information about the substance; and

(C) the Secretary of State delivers a copy of the statement submitted under subparagraph (B) to an appropriate official in the embassy of the country of destination or transmits it to such country by other appropriate means.

(2)(A) The provisions of paragraph (1) shall supersede any other provision of the law to the extent such provision is inconsistent with paragraph (1).

(B) No law enacted after the date of the enactment of this Act shall supersede this subsection unless it does so in specific terms, referring to this Act and declaring that the new law supersedes the provisions of this subsection.

(C) Nothing in this subsection authorizes the disclosure to the public of bona fide trade secrets or other confidential business information.

(c) For the purpose of this section, the term "banned or severly restricted substance" means—

(1) a food or class of food which—

(A) is adulterated, as defined by rules or orders issued under section 402 (a) or (c) (21 U.S.C. 342 (a) or (c)), or

(B) is in violation of emergency permit controls issued under section 404 (21 U.S.C. 344).

of the Federal Food, Drug, and Cosmetic Act;

(2) a drug which is—

(A) is adulterated as defined by rules or orders issued under section 501 (a), (b), (c), or (d) (21 U.S.C. 351 (a), (b), (c), or (d)).

(B) misbranded, as defined by rules or orders issued under section 502(j) (21 U.S.C. 352(j)), or

(C) a new drug or new animal drug for which an approval is not in effect under section 505 (21 U.S.C. 355) or section 512 (21 U.S.C. 360), respectively.

of the Federal Food, Drug, and Cosmetic Act;

(3) an antibiotic drug which has not been certified under section 507 (21 U.S.C. 357) of the Federal Food, Drug, and Cosmetic Act;

(4) a drug containing insulin which has not been certified under section 506 (21 U.S.C. 356) of the Federal Food, Drug, and Cosmetic Act;

(5) a device which—

(A) is adulterated, as defined by rules or orders issued under section 501(a) (21 U.S.C. 351(a)),

(B) is misbranded, as defined by rules or orders issued under section 502(j) (21 U.S.C. 352(j)).

(C) does not conform with a performance standard issued under section 514 (21 U.S.C. 360d).

(D) has not received premarket approval under section 515 (21 U.S.C. 360e), or

(E) is banned under section 516 (21 U.S.C. 360f), of the Federal Food, Drug, and Cosmetic Act;

(6) a cosmetic which is adulterated, as defined by rules or orders issued under section 601 (21 U.S.C. 361) of the Federal Food, Drug, and Cosmetic Act;

(7) a food additive or color additive which is deemed unsafe within the meaning of section 409 (21 U.S.C. 348) or section 706 (21 U.S.C. 376), respectively, of the Federal Food, Drug, and Cosmetic Act;

(8) a biological product which has been propagated or manufactured and prepared at an establishment which does not hold a license as required by section 351 (42 U.S.C. 262) of the Public Health Service Act;

(9) an electronic product which does not comply with a performance standard issued under section 358 (42 U.S.C. 263f) of the Public Health Service Act;

(10) a consuimer product which—

(A) does not comply with a consumer product safety standard adopted under sections 7 and 9 (15 U.S.C. 2056 and 2058) other than one relating solely to labeling,

(B) has been declared to be a banned hazardous product under sections 8 and 9 (15 U.S.C. 2057 and 2058),

(C) presents a substantial product hazard under section 15 (15 U.S.C. 2064), or

(D) is an imminently hazardous consumer product under section 12 (15 U.S.C. 2061),

of the Consumer Product Safety Act;

(11) a fabric, related material, or product which does not comply with a flammability standard (other than one related to labeling) adopted under section 4 (15 U.S.C. 1193) of the Flammable Fabrics Act;

(12) a product which is a banned hazardous substance (including a children's article) under sections 2 and 3 (15 U.S.C. 1261 and 1262) of the Federal Hazardous Substances Act;

(13)(A) a pesticide which, on the basis of potential risks to human health or safety or to the environment,

(i) has been denied registration for all or most signficiant uses under section 3(c)(6) (7 U.S.C. 136a(c)(6)),

(ii) has been classified for restricted use under section 3(d)(1)(C) (7 U.S.C. 136a(d)(1)(C)),

(iii) has had its registration canceled for suspended for all or most significant uses under section 6 (7 U.S.C. 136d),

(iv) has been proceeded against and seized under section 13(b)(3) (7 U.S.C. 136k), or

(v) has not had its registration canceled, but requires an acknowledgement statement under section 17(a)(2) (7 U.S.C. 136o(a)(2)),

of the Federal Insecticide, Fungicide, and Rodenticide Act, or

(B) a pesticide chemical for which a tolerance has been denied or repealed under section 408 (21 U.S.C. 346(a)) of the Federal Food, Drug, and Cosmetic Act; and

(14) a chemical substance or mixture—

(A) which is subject to an order or injunction issued under section 5(f)(3) (15 U.S.C. 2604(f)(3)),

(B) which is subject to a requirement issued under section 6(a)(1), 6(a)(2), 6(a)(5), or 6(a)(7) (15 U.S.C. 2605(a)(1), 2605(a)(2), 2605(a)(5), or 2605(a)(7)), or

(C) for which a civil action has been brought and relief granted under section 7 (15 U.S.C. 2606),

of the Toxic Substances Control Act.

METZENBAUM AMENDMENT NO. 1954

Mr. METZENBAUM proposed an amendment to the bill S. 1848, supra; as follows:

On page 35, beginning with line 4, strike out through line 17 on page 37 and insert in lieu thereof the following:

"(8)(A) If at any time the Secretary or the Secretary of Agriculture determines, with respect to a drug which is authorized to be shipped under this subsection, that such drug is present in a country to which shipment is not authorized under this subsection, the Secretary or the Secretary of Agriculture, as the case may be, shall—

"(i) immediately prohibit the shipment of such drug from the United States to any country;

"(ii) give the person shipping the drug from the United States prompt notice of such determination and prohibition; and

"(iii) afford such person an opportunity for an expedited hearing.

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MATHIAS. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, on Wednesday, May 14, 1986, at 9:30 a.m., to conduct a business meeting.

On the legislative agenda, the committee will be considering two bills concerning official mail costs (S. 2255 and S. 2272); an original bill to authorize appropriations for the Federal Election Commission for fiscal year 1987; Senate Concurrent Resolution 123, to permit the 1986 Special Olympics Torch Relay to be run through the Capitol Grounds; and two printing resolutions for the House of Representatives (H. Con. Res. 288 and H. Con. Res. 301).

Administrative business scheduled to be considered includes the following: use of the official office expense account to defray the cost of drug testing for Senate staff; the budget for the Medvid investigation by the Helsinki Commission; the majority leader's proposal for the use of Hart Subway during rollcall votes; long distance toll charges; and secure telephones for the Select Committee on Intelligence.

For further information concerning this meeting, please contact Carole Blessington of the Rules Committee staff on x40278.

ADDITIONAL STATEMENTS

SWEEDENS SWAMP

● Mr. KASTEN. Mr. President, early next week, the EPA will determine whether to veto an Army Corps of Engineer's decision to authorize a permit to fill a wetland known as Sweedens Swamp. This single decision may be the straw that breaks the camel's back, prompting me and many of my colleagues to raise serious questions about the future of the U.S. Wetlands Protection Program.

Wetlands protection is a critical issue on the national environmental agenda. Wetlands are vital natural resources. They maintain water quality, provide flood control, protect against erosion, and support ground water recharge and water supply. Additionally, they provide the habitat and breeding ground for thousands of plant and animal species.

Wisconsin once had 7.5–10 million acres of wetlands. Today, less than one-third of these remain. Valuable Wisconsin resources will be lost if this national protection program is weakened. Wisconsin's wetlands support a highly productive fisheries industry and are vital to many rare and endangered plant and animal species. These wetlands also recharge ground water, store valuable nutrients, treat wastewater, supply water, and help to control flooding. It is necessary that wetlands targeted for development activities are accorded the level of scrutiny required by the individual permit process.

Section 404 of the Clean Water Act establishes the wetlands protection program by charging the Army Corps with the duty of issuing permits to developers for eligible projects seeking to fill such sites. While the Army Corps initially issues the permits, the EPA is directed by Congress to promulgate guidelines for the corps to follow. The EPA is also directed to assume final review and veto authority over permit decisions.

Poor administration of section 404 has led to congressional hearings on this matter. Let us recall the controversy surrounding Robert Dawson's nomination because of his track record with the 404 Program. Assurances were received by the Senate that Mr. Dawson would uphold the integrity of the program. It is evident that this is not his intention. Recently, the Corps' Washington headquarters overrode the New England Corps' recommendation to deny a shopping mall developer's permit. If EPA abdicates its responsibilities by failing to uphold section 404, reinterpretation of EPA's guidelines will fly in the face of congressional intent and will destroy the Wetlands Protection Program.

The guidelines establish a "water dependency test" which assumes "practicable alternatives" exist if the project is not water dependent. A shopping mall is clearly not water dependent. The developer also contends that in order for an alternative to be practicable, it must first meet the developer's criteria. Such an approach would allow developers to create a "wish list" of criteria that only their wetland site could meet.

The developer, Pyramid Corp., offered a mitigation proposal to replicate the wetland at a sand and gravel pit. Although the status of this technology is questionable, the critical issue at hand is the interpretation of the 404 guidelines. The guidelines do not offer mitigation as a remedy for destroying wetlands when viable alternatives exist. If developers are allowed to destroy wetlands with the promise of building replacements, the Natural Wetland Protection Program should be renamed "The Swamp Swap."

I call upon Mr. Thomas, as do a number of my colleagues, to uphold the guildelines it promulgated by vetoing the developer's permit to destroy a Red Maple Swamp in order to construct a shopping mall in its place.●

STATEMENT OF ROGER WILKINS ON SOUTH AFRICA

● Mr. SIMON. Mr. President, one of the more thoughtful observers on the American scene is Roger Wilkins, professor of history at George Mason University and a senior fellow at the Institute for Policy Studies.

He recently testified before the House Foreign Affairs Committee. I read his testimony, and it deserves distribution beyond the House Foreign Affairs Committee, meaning no disrespect to that committee.

Professor Wilkins' beliefs can be summed up in two questions and two answers which he provides here: "Is a disastrous outcome in South Africa and in the region inevitable? I believe not. Can a new American policy make a difference? I believe so."

I share his beliefs and so do many others in this Nation and in other nations.

But the present drifting or, as Mr. Wilkins describes it, our "befuddled American acquiescence to the status quo," will not avoid that disaster.

The reality is that institutional racism either changes peacefully, or it changes violently, and if it changes violently, that violence is not contained within the boundaries of any one country. That is the lesson of history. That is the lesson of Hitler and Germany. How many times do we need to relearn that lesson? Or will we ever learn it?

I hope that we can start moving, and moving soon, toward a more sensible policy.

I ask that the Roger Wilkins testimony be inserted in the RECORD.

The testimony follows:

STATEMENT OF ROGER WILKINS

Mr. Chairman, members of the Committee—my name is Roger Wilkins. I am Senior Fellow at the Institute for Policy Studies, a Commonwealth Professor of Hitory at George Mason University and a member of the Executive Committee of the Free South Africa Movement. It is in that latter capacity that I testify here today.

For further purposes of identification, I would like to add that more than twenty years ago, in the Kennedy Administration, I served as Special Assistant to the Administrator of AID and bore special responsibility for African programs. During the Nixon presidency, I turned down an offer to be Deputy Assistant Secretary of State for African Affairs and at the inception of the Carter Administration, I declined an offer

to become Assistant Secretary of State for African Affairs. I submit this identifying material because many journalists and a number of other observers have attempted to dismiss the Free South Africa Movement as a group of frustrated civil rights activits in search of a cause. That obervation proceeded from the simple observation that each member of the Executive Committee of this movement—Mary Frances Berry, Walter E. Fauntroy, Sylvia Hill, William Lucy, Randall Robinson and I—is black. But all of us are full human beings with a variety of public policy impulses and histories which include, in the case of all of my colleagues, as long and deep an involvement with African issues as my own.

I submit this testimony in support of HR 997 offered by Rep. Dellums of California which would impose strict prohibitions on a broad range of economic exchanges with South Africa and in support of HR 2589 offered by Rep. Schroeder of Colorado, which would prohibit the exploitation of the national resources of Namibia. I also support H.R. 4276 offered by Rep. Hamilton of Indiana, which, as I understand it, would require Congressional debate on and approval of any U.S. government support for paramilitary operations in Angola.

I need not rehearse for you the details of the brutal oppression, the theft of life, the theft of labor, the theft of childhood and the theft of human joy that is the official policy and practice of the apartheid regime in Pretoria. That regime changes its rhetoric every two months or so, but its purposes remain constant: The maintenance of white domination in South Africa and of South African hegemony in all of Southern Africa. To that end, black South Africans are being killed at a rate of 4 or 5 a day and South Africa's neighbors must endure both the constant threat of brutal cross-border raids by the mighty South African military forces and South African-supported subversion, which now has American approval and material support in Angola.

We in the Free South Africa Movement want the killings to stop and a true peaceful national political process to begin in South Africa. We want Namibia to be freed of South Africa's illegal and exploitative stranglehold. We want the bloody turbulence in the entire region to end, and we want a prompt termination of the new U.S. military alliance with South Africa in Angola.

None of those evils will end until apartheid ends and the bloody security apparatus that sustains and defends it is dismantled. Apartheid and its enforcement mechanisms are the rogue elephants of Southern Africa. We now know that carrots do not pacify apartheid's appetite. Constructive engagement has failed. The apartheid regime has not understood sweet talk.

Constructive engagement was doomed from the start because it sought to pacify the region around the edges of South Africa without facing apartheid directly and without engaging black South Africans or their aspirations. Constructive engagement attempted to free Namibia, get the Cubans out of Angola, and pacify South Africa's borders with Mozambique, Botswana and Lesotho. Under constructive engagement, the capital of Lesotho has been raided and its government overthrown; the capital of Botswana has been raided; a revolt in Mozambique has been supported by South Africa despite its agreement not to do so; South Africa's iron grip on Namibia has not slackened and now the rebels it has supported in Angola threaten private U.S. assets there with sophisticated weapons supplied by the U.S. The Cubans, of course, have not gone home, and Angola has turned away from the U.S. to look to the U.N. as the principal hope for its political future. In South Africa blood and death at an unprecedented level speak eloquently to the world and to black South Africans about the bankruptcy of current American policy.

In my debates with him, the South African Ambassador has charged that those of us who urge strict sanctions against Pretoria are seeking to punish the country. That is wrong. It is the pretoria regime itself that is punishing the country. By continuing its attempts to batter the thirst for freedom out of its black population, Pretoria is poisoning its country's future, killing its children, embittering its youth, radicalizing its politics and building, death-by-death, the stage for future death and destruction that will horrify the world. Its feverish repression has turned South Africa into an efficient factory for the production of radicals who are anti-white, anti-American, Anti-capitalist. The contrast between the hero's reception given to Sen. Robert F. Kennedy in the late sixties and Sen. Edward M. Kennedy last year—where he was hooted off some platforms—speaks not to differences between the two Senators, but to the new anti-Americans engendered by the Reagan Administration's gift of comfort to Pretoria and the continued support provided by substantial U.S. private economic activity there.

Is a disasterous outcome in South Africa and in the region inevitable? I believe not. Can a new American policy make a difference? I believe so. Those who announce smugly that this is a problem that the South Africans themselves will settle are telling a partial truth for selfish or cowardly reasons. Of course, South Africans themselves will ultimately determine the future course of their country. But that does not answer the intermediate questions of how long it will take and how much more blood will be spilled in the shaping of that outcome. Those who snuggle comforably under the "South Africans themselves" shelter do so either because it is still very profitable to do business as usual in South Africa or because they fear the results of unleashing democratic forces there. They also arrogantly ignore the powerful appeals for outside help from such courageous South Africans as Winnie Mandela and Desmond Tutu.

Those South African appeals for help are based on a rock of knowledge forged by daily experience that tells people like Mandela and Tutu that the apartheid regime will not listen to reason even when that reason is in the long-term interests, not just of the people it rules by brute force, but also of that minority it actually represents. A distinguished American professor who recently returned from South Africa told me that every businessman in South Africa to whom he spoke had the same political prescription for the government: Repeal the apartheid laws; repeal the security laws; free Nelson Mandela and other political prisoners; unban the ANC and enter into political negotiations with the blacks. But, he reported, the government won't listen to them. They say it only began to cock an ear slightly when foreign banks refused last summer to roll over South Africa's short-term debt. Rhetorical abhorrance of apartheid won't get Pretoria to the bargaining table, but economic sanctions that are felt inside the country have a real chance of working. The apartheid regime listens when it is cracked over the skull with the prospect of a disintegrating economy.

All whites in South Africa are not alike. All Afrikaaners are not alike. There are whites—Afrakaaners and English speakers—who understand that there is a better path to the future that one paved with the dead bodies of South African citizens. Right now, in the context of a befuddled American acquiescence in the status quo, some, like the businessmen mentioned above, lack the punch to make their views felt and others lack the courage or the political motivation to form views that are in their own interests and to make them known. The only white opposition the Pretoria government has to listen to just now is on its right. This need not always be so. Strong and effective U.S. sanctions, I believe, would enlarge and embolden the now latent and impotent moderate white opposition. They would, in my judgment, open up South African politics and hasten the day when peaceful negotiation rather than brutal repression is the central fact in South African political life.

By grasping this option, the U.S. government can move forward on a line where morality and long-term U.S. political interests converge. We would be helping to put an end to one of the most repressive regimes on earth while replacing the growing enmity of the people who will surely chart South AFrica's future with their respect and perhaps even their affection.

Thank you, Mr. Chairman.●

BOSTON URBAN GARDENERS

● Mr. KERRY. Mr. President, I would like to take this opportunity to recognize Boston Urban Gardeners, an organization which has made significant contributions to fostering a sense of community in Boston neighborhoods. The organization brings together neighbors to work on a common goal, it provides low-income senior citizens a valuable recreational and social activity, it helps prevent neighborhood crime, and it provides nutritional food for people who might otherwise not be able to afford it. Boston Urban Gardeners is a clear example of a public-private partnership that improves the quality of neighborhood life and works to everyone's benefit. The organization is an important model for other cities and deserves commendation and attention.

Charlotte Kahn, executive director of Boston Urban Gardeners, recently testified before the President's Commission on Americans Outdoors on the importance of her organization. I ask that her testimony be printed in the RECORD.

The testimony follows:

PRESIDENT'S COMMISSION ON AMERICANS OUTDOORS, PUBLIC HEARING, BOSTON, MA, APRIL 3, 1986

(Presented by Charlotte Kahn, Executive Director, Boston Urban Gardeners)

Boston Urban Gardeners began in 1976 as a volunteer organization dedicated to the creation and support of community gardens in Boston's low-income neighborhoods. Boston currently contains well over 100 community gardens. Through our efforts and the hard work of Boston residents, more than one million dollars worth of fresh produce is grown annually by those

who most need it. In addition, gardeners get exercise outdoors, can socialize with neighbors they may not have known before and provide the "eyes on the street" so essential to neighborhood safety and cohesion. The majority of Boston's urban gardeners are senior citizens; the vast majority are people of very limited income.

We also work closely with neighborhood multi-service centers, community development corporations and city and state agencies to rebuild and upgrade the quality of life in Boston's neighborhoods. For the past three years we have provided a very successful training program to unemployed Boston residents in landscape construction and urban land management, and are now offering training programs to Southeast Asian refugees and senior citizens in landscape management to help them participate in Boston's downtown development boom. These programs and others like them complement more conventional parks and recreation programs, providing an essential element of economic development to low income neighborhoods. We also work closely with other recreation and urban open space organizations to ensure that urban residents have access to a full range of active and passive recreational opportunities.

I personally, like many of my colleagues, spent several years working more than full-time as a volunteer, supporting myself at a minimal level with a part-time job. Those years were exhilarating, rewarding, successful and finally, exhausting and untenable as a strategy for a long-term commitment to enhancing the quality of life in Boston's low income communities.

Briefly, I would like to argue that volunteerism at best can supplement and complement but never substitute for the government's role in the provision of access to recreational lands and programs.

Particularly as regards recreational programs for low income people, volunteerism has serious limitations. It takes a great deal of time and money to be poor. People on low or fixed incomes do not have the luxury of sending out their laundry or bringing in babysitters and housekeepers to enable them to volunteer their time. Nevertheless, may people of low income are remarkably active in their churches, community gardens and neighborhood associations. The generosity of the poor is well known. However, to expect people of low income to take on roles traditionally and successfully performed by government agencies would in my experience be an exploitative, irresponsible, and finally, unsuccessful strategy for the provision of essential recreational opportunities in urban areas.

In particular, I would point to the federal Urban Parks Recovery Action Program, the Land and Water Fund, Community Development Block Grants, summer youth programs, and the National Park Service and urban mass transit as critical federal contributions. Without them, access to and full use of recreational land would be severely restricted.

Volunteerism, city and state programs, and private sector involvement must have a solid base and vision on which to build. Creative federal incentives and programs will continue to attract committed, generous and hardworking volunteers—with all of the new initiatives and supplementary resources required to reinvigorate our recreational lands and programs.

However, as a society which contains both unprecedentedly mobile and tragically disadvantaged populations, the federal government must provide the overview, incentives and resources to equitably address our region's diverse recreational needs.

(Note: Charlotte Kahn is also President of the Boston GreenSpace Alliance, a coalition of more than 45 organizations concerned with the natural environment and outdoor recreational opportunities in Boston's neighborhoods.)●

THE CRISIS IN SOUTH AFRICA

● Mr. SIMON. Mr. President, the Chicago Defender has provided constant and quality coverage of the ongoing crisis in South Africa. Recently the newspaper published a "Letter to the Editor" which underscores the need for the United States to continue to pressure the South African Government to change its apartheid policies. The letter raises an issue of increasing concern: that the repression practiced by the South African Government against its black citizens includes torture and imprisonment of that country's most vulnerable group—black children. Not only must we be aware of this horror, we must use every tool we have at our disposal to stop it. I ask that the letter be printed in the CONGRESSIONAL RECORD.

The letter follows:

URGES SPLIT OF UNITED STATES AND SOUTH AFRICA

DEAR EDITOR: The South African Ambassador to Britain, Dennis Worral, was quoted recently in the Chicago Tribune as having said, "There are instances in South Africa of persons, particularly youngsters, being subjected to torture in detention." His statement was buried in a longer article as if this latest barbarism should be considered normal behavior. Civilized people do not torture children.

The South African Ambassador's calm acknowledgement of what is done in South African prisons cannot cleanse the reality of such savagery as if to say, "Yes, we torture and kill kids, and, oh yes, how was the stock market today, and, Dear, when will dinner be ready?"

War is war, but a war against children? Is there no more horror in horror. Are we a people so jaded that we can no longer cry out against brutality. Or is it because the Blackness of these children's skins is supposed to provide immunity to pain when they are tortured?

Is the South African Ambassador to be given a prize for his truthfulness, or do we just hope that he will go away since knowing about these savage acts makes us accomplices if we refuse to sound the alarm.

Perhaps Franz Augerbach, the former president of the respected South African Institute of Race Relations, is correct in his statement to the *Daily Mail* of Johannesburg. He said, "If I were Black the figure of 1,200 dead in civil unrest—two-thirds at the hands of forces of law and order—might start looking like attempted genocide. It is (instead) the result of applying a military solution to a problem that needs a political solution."

We Americans, according to a recent Gallup Poll, are growing more sympathetic and supportive of South African Blacks. Of Americans watching the situation in South Africa, 73 percent said their sympathies lie with the Black population. This is up from 63 percent in October 1985 and 67 percent in August 1985. Only 12 percent sided with the South African government.

Yet President Reagan applauded the South African president at a national press conference on April 9, 1986. He said, "President Botha wants change and has made a number—taken a number of steps, as many as he can get away with. It's just like me dealing with the Hill up here." Mr. Reagan said further, "He has agreed with us that he finds the past system repugnant and is trying to get changes as quickly as possible."

Children are being tortured. It is not like "dealing with the Hill." Women whipped, dragged out by their feet, American missionaries beaten in front of churches, and churchgoers gassed by a regime that the American people have turned against. Yet President Reagan, who is grandiloquent about the sancitity of the family, apologizes for a regime that tortures children.

Americans are decent people, and we love our children. Tonight, when we, who are parents, tuck our children into bed, hopefully in ones that are warm and safe, we should recall that our government is in bed with a regime that admits torturing children, and says, in effect, "So what?"

If circumstances were different, those brutalized children could be our own.

I am a father. I love my children, and I love to see the happiness of other children. Children have the right to happiness. Any regime that tortures children, kills hope, happiness and life, must be excluded from the circle of humanity. Americans must say, "Enough. We do not join hands with child-torturers and killers. We will not be silent accomplices."

EDWARD L. PALMER,
President, Black Press Institute.●

RICHARD L. COX, JR., RECEIVES LAW DEGREE

(By request of Mr. DOLE, the following statement was ordered to be printed in the RECORD:)

● Mrs. HAWKINS. Mr. President, it is a pleasure to have this opportunity to recognize the accomplishments of Mr. Richard L. Cox, Jr., U.S. marshal for the middle district of Florida.

Richard Cox, a resident of Tampa, recently received his law degree from the Stetson University College of Law. Mr. Cox was able to complete this rigorous course of study by taking annual leave to attend mandatory classes and working nights and weekends. Because of his outstanding efforts, he is now one of nine U.S. marshals nationwide with a law degree. For this I congratulate him.

Richard has displayed great dedication and drive throughout his career. He is graduate of the U.S. Military Academy at West Point and served 20 years in the Army attaining the rank of lieutenant colonel. He has obtained a master of business degree from the University of Tennessee, has completed all the course work for a doctorate in economics, and has done postgraduate work in the area of managerial studies. Mr. Cox has also completed studies and received a certificate in criminology and law enforcement, and

taught as an adjunct professor at the University of South Florida, Florida State University, and the University of Tampa. These achievements are representative of Richard's character. I ask my colleauges to join me in congratulating Mr. Richard L. Cox, Jr., U.S. marshal for the middle district of Florida.●

MOYNIHAN ON LaROUCHE, STOCKMAN, COURAGE, AND CONVICTIONS

● Mr. HART. Mr. President, the recent issue of the New Republic includes an excellent article by our colleague, Senator DANIEL PATRICK MOYNIHAN.

Senator MOYNIHAN has identified a subtle and compelling connection between two troubling developments in American political life: The recent electoral successes by adherents of the insidious LaRouche sect and the revelations by the architect of Reaganomics, David Stockman. The connection drawn by the senior Senator from New York involves the breakdown of the ideological immune systems of the Democratic and Republican Parties.

Senator MOYNIHAN is a soldier of conscience from both battles. He was an early and outspoken critic of the LaRouche sect, and helped drive them out of the Democratic Party in New York when the prevailing attitude of some officials was benign somnolence. On Reaganomics, the record is equally clear: From the very beginning, Senator MOYNIHAN warned us that the math didn't work; that a defense buildup couldn't be paid for with a tax cut; that the promises of lasting prosperity and a balanced budget would not be realized, and that this prejudice masquerading as a philosophy was designed to undermine progressive government by people who hated government.

In both instances, Senator MOYNIHAN was right, and right early.

Mr. President, I commend this article, "Political Aids: Sick of Stockman and LaRouche," to all of our colleagues. I ask that it be printed in the RECORD.

The article follows:

POLITICAL AIDS: SICK OF STOCKMAN AND LaROUCHE

Political life in this century has been much influenced by esoteric and even concealed ideological movements. In common usage, ideology is taken to mean opinion, perhaps strongly held opinion. But it is something more: a kind of secular religion. As a largely apolitical society, the United States has not generated much by way of ideology. Various institutions, such as the labor unions, have had to ward off assault from assorted Marxist movements. But our political parties have been left largely untroubled. Now, though, this is changing. Our ideological immune system is not working very well in either party.

First the Democrats. The neo-fascist, Jew-baiting, conspiratorial ideas of Lyndon H. LaRouche Jr. pose an extraordinary danger to the Democratic Party. Not only have LaRouche candidates won the primary victories for lieutenant governor and secretary of state in Illinois, but this faction has made its way virtually unopposed into the Democratic congressional campaigns across the country.

This latest phase in the LaRouche movement began in New York City in 1981, when a LaRouche candidate entered the Democratic primary contest for mayor and was afforded all the honors and dignities attendant upon a legitimate aspirant to the party's nomination. This gave LaRouche a previously unimaginable legitimacy. John LoCicero, a political strategist for Mayor Koch in the 1981 campaign, said the LaRouche candidate's bona fides wasn't challenged because "it's not part of the democratic process." This is an honorable sentiment but calamitously wrong. The level of political literacy among the New York Democratic leaders was so low that no one understood who the LaRouchies were. They spoke a political language that the political classes of the city simply did not understand. When the LaRouche candidate was challenged by another "insurgent," on the ground of non-adherence to the principles of the Democratic Party, a state judge ruled that such a charge had to come from a party official. Which did not happen.

In 1982 a LaRouche candidate announced he would challenge me in the Democratic senatorial primary. We fought him from day one. A group of highminded New Yorkers had formed what Hodding Carter calls a "Fair Play for LaRouche Committee." That outfit suggested that my campaign manager, Tim Russert, had engaged in unfair campaign practices when he called the LaRouche movement "anti-Semitic." Our battle may have seemed quixotic to the political classes. They are rarely comfortable with ideological battle (which is more a disability than a dishonor). We declared that ideas matter to us, and I think the voters responded that ideas matter to them as well. We won handily.

And now to the Republican Party. I argued in these pages two-and-a-half years ago ("Reagan's Bankrupt Budget," December 31, 1983) that the unprecedented triple-digit deficits beginning in President Reagan's second year in office were deliberately created to force a great reduction in the size and activities of the federal government. Few believed me. More, perhaps, believed Friedrich von Hayek, mentor to a generation of conservative economists. Asked about our deficits by an Austrian magazine, von Hayek said in 1985 that he regretted them, but added: ". . . one of Reagan's advisers told me why the President has permitted [the deficits] to happen, which makes the matter partly excusable: Reagan thinks it is impossible to persuade Congress that expenditures must be reduced unless one creates deficits so large that absolutely everyone becomes convinced that no more money can be spent."

The disaster was not deliberate; the deficits were. The deficits were meant to spur action, but didn't, thereby resulting in disaster. We now have David Stockman's memoirs, "The Triumph of Politics: Why the Reagan Revolution Failed," which I believe confirm the theory.

The story: young David Stockman becomes a close adviser to the Reagan election campaign of 1980 and will soon be nominated to be director of the Office of Management and Budget. He is part of a foursome, along with Representative Jack Kemp, economist Arthur Laffer, and businessman Lewis Lehrman. They are advocates of "supply-side" economics, a school that proposes to stimulate the economy through private rather than public spending. To that end the foursome advocates large tax cuts.

These are heady young intellectuals. They can scarcely contain their energy or enthusiasm. But trouble soon appears within the group. Dr. Laffer's celebrated curve puports to demonstrate that tax cuts will generate so much additional revenue through the stimulated private economy that no reduction in government spending will be necessary to balance the budget. Young Stockman, however, wants to reduce spending: he is against big government on principle. In late August and September of 1980, Stockman begins to realize that the various theories scribbled on the supply-siders' napkins add up to an economic program far more radical than he had realized.

"If you implemented the Gold Standard Napkin and stopped inflation, Professor Laffer's Tax Cut Napkin didn't work. You would get more real economic growth but no gain in federal revenues. Consequently, only sweeping domestic spending cuts could balance the budget—an action that I believed was desirable but which the other supply siders had denied would be necessary."

At its 1980 convention, the Republican Party endorses both a 30 percent tax cut and a radical reduction in business taxes through more generous depreciation rules. Stockman discovers that to balance the budget, more than $100 billion per year in spending cuts will be necessary. Far from giving Stockman pause, though, the arithmetic excities him. It will force Congress to cut, and cut everywhere. "The idea of a real fiscal revolution, a frontal attack on the welfare state, was beginning to seem more and more plausible."

Enter, alas, the politicians, most notably Ronald Reagan. "The Cabinet was not disposed to . . . [a] patient attack on spending," Stockman notes, adding that "the President never had the foggiest notion." Stockman now admits it was his fault not to have aniticipated such a response. But at the time he saw it entirely as a failture on the part of the politicians. In his zeal, and zeal shines through his memoir, he could not imagine that they would not do what he had made it necessary for them to do. Well, they didn't and the rest in history.

The point is: Capitalism had become an ideology. Stockman's vacabulary is replete with terms we associate with ideology, with an intense belief system, a secular religion, He describes his migration from the student left, SDS and suchlike, to the Republican right in terms that are legitimately intellectual. But at times he also clearly crosses the line dividing measured judgment from radical conviction. He cites authors of meticulous clarity and caution with that element of fervor we associate with zealotry and even intolerance.

Because of his near-addiction to it, Stockman is an absorbing figures to a student of ideology. He goes on as if the Reaganities had appointed him a kind of party theorist responsible for doctrinal conformity. He describes the "organs of international aid" such as the World Bank as "infested with socialist error." He gives one chapter the title "The Coming of the New Order." He recalls supply-side publicist Judge Wanniski endlessly repeating that "over-turning an existing order starts wih one person and an

idea. An idea persuades a second person, then a third, then a fourth. . ." and he is reminded of Lenin's trip from Zurich to Russia in the boxcar. "I knew that Wanniski wasn't talking historical rot. Chain reactions occur in politics; the Soviet precedent, of course, was not exactly inspiring." Not exactly?

Most bizarre of all is Stockman's description of Irving Kristol. Kristol is perhaps the preeminent conservative intellectual of our age. But Stockman describes him, at their first meeting, as "a secular incarnation of the Lord Himself."

We have here a familiar phenomenon. Serious social thinkers such as Kristol come along with fresh insights. There is more, or less, to a set of existing arrangements than has been realized. Then a younger generation elevates thought into belief. Not only are the ideas of their mentors true, they are the Only Truth. Given by the Lord Himself, or his secular incarnation. What began as skepticism concerning perceived notions transmutes into fierce conviction. We have seen all too much of this in the 20th century.

I don't mean to disparage David Stockman's idealism. Unlike so many who pass for conservatives in this period, he is not an apologist for privileges access to public benefit. Just the opposite. His rage is directed more at those who gorge at such public troughs as the Export-Import Bank than at those who live on food stamps. The irony is that the first sort are the ones Stockman helped bring to power.

The "failure" of the Reagan Revolution has brought about horrendous structural changes in the American economy, which will be with us for at least the rest of this century. We are now, for example, a debtor nation. Our export economy is in ruins because of the run-up of the dollar. Our corporations hollow out as they transfer production facilities abroad. The national debt is so large that for an indefinite period it will require a third to a half of all revenue from the personal income tax to pay the interest. If the personal income tax is taken as an elemental tax on labor, and debt service an elemental return to capital, we have here the largest transfer of wealth from workers to owners in the history of our political economy. As Herbert Stein has noted, once Republican legislators found you could have a three-digit deficit and the heavens didn't fall—that day—there was no restraining them. Thus the week after enacting Gramm-Rudman, the Senate passed a $52 billion farm bill.

What Stockman discovered is that after a first round of budget cuts, directed mostly at the poor, Congress came up against the fact that the electorate wanted pretty much the government it was getting. No New Order emerged. To the contrary, something like a latter-day version of Mark Twain's Great Barbecue commenced. The late Jospeh Kraft captured the controlling principle of Washington in the 1980s in one word: greed.

Stockman watched his dream vanish, and slowly his faith began to weaken as well. He became less a radical, more a conservative, even if an embittered one. We have seen socialist ideals betrayed. Now, I suppose, we see capitalist ideals betrayed. The only thing worse than shortsighted, spendthrift, meddling congressmen, Stockman concludes, "is ideological hubris. It is the assumption that the world can be made better by being remade overnight."

We have in Washington today a political class incapable of recognizing a radical ideology when it is verily in the grips of one. Stockman is judged to have behaved badly, but not differently. He told untruths to Congress; he speaks unkindly of colleagues and disrespectfully of the president. That it was his ideas that mattered is a seemingly inaccessible thought. The 20th century has not been especially forgiving of such incapacity.—Daniel Patrick Moynihan (Daniel Patrick Moynihan, a Democrat, is the senior Senator from New York.)●

FRANKING COSTS—ONCE AGAIN

● Mr. QUAYLE. Mr. President, many of us were relieved when the House of Representatives deleted from the supplemental appropriations bill the $42 million for franking costs in fiscal year 1986. But now it turns out that there are no grounds for that feeling of relief. We have created such a marvel—perhaps such a monster—that we can spend the whole additional $42 million without ever having to appropriate one nickel—$0.05.

How can that be? Attached to my statement is a letter from the Comptroller General which states, in effect, that the Postal Service is required to absorb any franking costs that Congress does not fund. In other words, if we do not stick it to the taxpayer through a supplemental, we stick it to the postal patron through an increase in postal rates.

Mr. President, we cannot deal with the escalating costs of the frank through inaction. We also cannot deal with the matter through a Senate resolution such as the one reported from the Rules Committee (S. Res. 374) because that will not restrain the costs of the other body. The only way we can restrain franking costs in both Houses of Congress is by legislation—and I ask all my colleagues to support my initiative, S. 2272, the "Franking Cost Control Act" currently pending before the Rules Committee.

I ask that the text of the Comptroller General's opinion be printed in the RECORD.

The opinion follows:

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, DC, May 2, 1986.

B-221498.26.

Hon. DAN QUAYLE,
U.S. Senate.

DEAR SENATOR QUAYLE: This letter is in response to the inquiry dated March 10, 1986, signed by you and Senators Pete Wilson, Phil Gramm, and Don Nickles, as to whether the Antideficiency Act (31 U.S.C. § 1341-1351) is violated when the cost as billed by the Postal Service of delivering congressionally franked mail exceeds the amount appropriated in a given fiscal year. In this respect, you point out that the amount appropriated for congressionally franked mail for fiscal year 1986, after reduction pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), is $95.7 million while the estimated cost of handling congressional mail during the fiscal year is $146 million.

The Antideficiency Act prohibits an officer or employee of the Government from making or authorizing an expenditure or obligation in excess of the amount available in an appropriation or fund for the expenditure or obligation. It also prohibits commitments for the payment of money in advance of an appropriation unless otherwise authorized by law. 31 U.S.C. § 1341. For the reasons which are explained in greater detail in the enclosed Office of General Counsel staff discussion paper, we conclude that no violation of 31 U.S.C. § 1341 is incurred when the cost of handling franked mail exceeds the amount appropriated by the Congress to pay the Postal Service for handling the franked mail. This practice is authorized by 39 U.S.C. § 3216(c) which makes the lump-sum appropriation made to the legislative branch for payment to the Postal Service full payment for all matter mailed under the frank. Furthermore, absent later appropriations for additional costs incurred by the Postal Service for delivery of franked mail, the Postal Service is entitled to receive no more than the amount already appropriated by the Congress for fiscal year 1986 for payment for handling franked mail, as reduced by any sequestrations under Public Law 99-177.

Sincerely yours,

MILTON J. HOWLAN
(For Comptroller General of the United States).

OFFICE OF GENERAL COUNSEL STAFF
DISCUSSION PAPER

The evolution of the congressional franking privilege is discussed in the following passage from the report of the Senate Post Office and Civil Service Committee prepared in connection with Congressional franking reform:

BACKGROUND

"History

"The word 'frank' is derived from the Latin francus which means 'free.' the franking privilege denotes the right of a governmental official to send matter through the public mails free of postage. This privilege, as it applies to Members of Congress, is older than the Declaration of Independence itself, having been enacted by the Continental Congress on November 8, 1775. On October 18, 1782, the franking privilege was extended to letters, packets and dispatches to and from Members of the Continental Congress."

Franking Laws 1789 to Present

The First Congress enacted in 1789 practically the same laws as were in existence under the Continental Congress. In 1792, the law was changed to specifically include the Vice President, Members of the House and Senate, and assistants.

During the 1800's the franking privilege enjoyed by the Congress was alternatively broadened and limited depending upon the mood of the citizens. In 1845, legislation was passed conferring the right of the Secretary of the Senate and Clerk of the House of Representatives to use the franking privilege.

Due to alleged excessive abuses, the franking privileges for Congressmen were discontinued for a few years in the mid-nineteenth century.

Little was done until 1957 when the uniform date was established for termination of the right to use the frank by former Congressmen [on] June 30 following the expiration of their term of office * * * The privilege, with but the one exception, has continually been in effect for nearly 200 years.

Justification

The reasons underlying the franking policy are fundamentally sound. Free transmission of letters on governmental business is directly connected to the well-being of the people because of the nature of the legislative function. The franking privilege serves as an aid and auxiliary in informing the populace since most Members of Congress would be unable to afford correspondence with their constitutency in the absence of the privilege. It may also be stated that the use of franked mail for official business also provides an efficient means of posting since the Postal Service is not required to stamp and cancel franked mail. S. Rep. No. 93-461, 93d Cong., 1st Sess.[2]

The current statutory authority for Members of the Congress and others to use the franking privilege is set forth generally in chapter 32 of title 39, U.S.C. and 2 U.S.C. § 31b-4 (1982).

While use of the franking privilege means that costs are not paid by those entitled to use the frank, the costs obviously must be borne by someone. Until 1953 all costs connected with the frank were borne by the Post Office Department appropriations. These appropriations were funded by postal revenues and when these were inadequate, the deficit was made up out of the general fund of the Treasury. In 1953 the Congress first authorized lump-sum appropriations to pay the postage on mail sent under the frank. Act of August 15, 1953, ch. 511, § 2, 67 Stat. 614. Since the use of the frank itself was not limited, the practice initially followed was for the Post Office Department to request payment in the appropriation request submitted for the fiscal year following the fiscal year to which the billing applied. Congress then appropriated amounts it deemed sufficient based upon its determination of the propriety of the billing.[1] The amount appropriated was also immediately made available for payment to the Post Office rather than awaiting the beginning of the fiscal year of the act in which it was contained in order to make the funds available as soon as possible. This practice continues today.

In 1970, the United States Postal Service was established and the Post Office Department was abolished by the Postal Reorganization Act. Pub. L. No. 91-375, Aug. 12, 1970, 84 Stat. 719. The Postal Service at its first opportunity requested that Congress change the timing of payments to the Postal Service for its handling of franked mail. The Postal Service desired to shorten the time elapsed between when it handled the franked mail and when it received payment related to handling the franked mail. Thus it requested an end to the practice of requesting payment in the fiscal year appropriation following the fiscal year during which the service was rendered and upon which the request was based. Under the proposed new system, quarterly billings would be made based upon estimated volume. These estimated billings would be adjusted at the end of the fiscal year based upon actual volume.

Appropriations would thereafter be requested in advance based upon Postal Service estimates similar to the way Government agencies request operating appropriations. While the billings would be reconciled with actual volume of franked mail handled upon close of the final quarter, actual payments could not exceed appropriations. To address the problem of shortfalls caused by Postal Service under estimates in its initial budget request, or changes in the method employed by the Postal Service to determine its billing to the Congress, the Congress also adopted the practice of adjusting the final quarter's billing through use of the next fiscal year's appropriations. However, no requirement was imposed upon the Congress to appropriate funds to cover the adjusted billings and no effort was made to limit the use of the franking privilege.[2] In fiscal year 1982, the Postal Service began monthly billings for franked mail based upon one-twelfth of the amount of the appropriation for "Official Mail Costs" made for the fiscal year. The Postal Service also provides quarterly reports to show actual usage and to revise its estimate of actual yearly costs. Total billings may not exceed the amount appropriated. Any shortfalls are to be considered during the following fiscal year's appropriation request.[3] This is the current procedure.

DISCUSSION

At the time that the Postal Service proposed the change to the payment procedure to decrease the time between its rendering the service and receiving payment, Congress amended 39 U.S.C. § 3216 to provide:

"§ 3216. Reimbursement for franked mailings

(a) The equivalent of—

(1) postage on, and fees and charges in connection with, mail matter sent through the mails—

(A) under the franking privilege * * * by the Vice President, Members of and Members-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a member of the House), the Legislative Counsels of the House of Representatives and the Senate, the Law Revision Counsel of the House of Representatives, and the Senate Legal Counsel; and

(B) by the survivors of a Member of Congress under section 3218 of this title; and

(2) those portions of fees and charges to be paid for handling and delivery by the Postal Service of Mailgrams considered as franked mail under section 3219 of this title; shall be paid by a lump-sum appropriation to the legislative branch for that purpose and then paid to the Postal Service as postal revenue. * * *

(c) Payment under subsection (a) * * * of this section shall be deemed payment for all matter mailed under the frank and for all fees and charges due the Postal Service in connection therewith."

Subsection (c) of this provision was new and for the first time expressly stated what had been implied since 1953—that regardless of the cost incurred by the Postal Service in handling franked mail, the amount the Congress appropriated to the Postal Service would be considered payment in full for that service.

Accordingly, exercise of the franking privilege without regard to amounts appropriated for payment to the Postal Service for this service is authorized by law and thus not a violation of 31 U.S.C. § 1341.[4] Members, therefore, are authorized to use the franking privilege and the Postal Service is required to handle franked mail regardless of the amount appropriated by the Congress for "Official Mail Costs." Should the actual costs of handling franked mail exceed the amount appropriated (as reduced by any sequestrations under Public Law 99-177), no violation of 31 U.S.C. § 1341 would occur since the amount appropriated is as a matter of law deemed full payment for all matter sent under the frank. Therefore, if the amount billed exceeds the amount appropriated, the Postal Service should be paid only the amount appropriated as reduced by sequestration, unless additional funds are provided by a supplemental appropriation.

DIGEST

No violation of 31 U.S.C. § 1341 is incurred when the cost of handling franked mail exceeds the amount appropriated by the Congress to pay the Postal Service for handling the franked mail. This practice is authorized by 39 U.S.C. § 3216(c) which makes the lump-sum appropriation made to the legislative branch for payment to the Postal Service full payment for all matter mailed under the frank. Furthermore, absent later appropriations for additional costs incurred by the Postal Service for delivery of franked mail, the Postal Service is entitled to receive no more than the amount initially appropriated for the fiscal year in question for payment for handling franked mail, as reduced by any sequestration under Pub. L. 99-177.●

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[1] See H.R. Rep. No. 1557, 87th Cong., 2d Sess., accompanying the Legislative Branch Appropriations Bill for 1963, 8 (1962), *Legislative Branch Appropriations for 1962 Hearings before the Subcommittee of the Committee on Appropriations House of Representatives*, 86th Cong., 2d Sess. 273-274 (1961); H.R. Rep. No. 1607, 86th Cong., 2d Sess., accompanying the Legislative Branch Appropriations Bill, 1961, 4-5 (1960); and *Legislative Branch Appropriations for 1961 hearings before the Subcommittee of the Committee on Appropriations House of Representatives*, 86th Cong., 2d Sess. 293-296 (1960).

[2] See H.R. Rep. No. 92-937, 92d Cong., 2d Sess., accompanying the Legislative Branch Appropriations Bill, 1973, 10-11 (1972); *Legislative Branch Appropriations for 1973, hearings before a Subcommittee of the Committee on Appropriations House of Representatives*, 92d Cong., 2d Sess. 840-845 (1972); *Legislative Branch Appropriations, 1973, Hearings before the Senate Appropriations Committee*, 92d Cong., 2d Sess., 449-460 (1972). Rule XLVI of the House of Representatives limiting use of the frank by Members of the House under 39 U.S.C. § 3210(d) (relating to mass mailings) was adopted by the House on March 2, 1977 (H. Res. 287, 95th Cong., 123 Cong. Rec. 5952-5953) and currently constitutes the only limitation upon the amount of the use of the frank that we are aware of.

[3] See *Legislative Branch Appropriations for 1982 Hearings before a Subcommittee of the Committee on Appropriations House of Representatives*, 97th Cong., 1st Sess. 345-346 (1981).

[4] We note that the appropriation for "Official Mail Costs" in the annual Legislative Branch Appropriations Act is deemed postal revenue by virtue of 39 U.S.C. § 3216(a). Postal revenue is required by law to be deposited to the Postal Service Fund, 39 U.S.C. § 2003 (b)(1), and immediately appropriated to the Postal Service, 39 U.S.C. § 2401(a). Since the fund is a no-year revolving fund, it is available to pay all expenses incurred by the Postal Service in carrying out its authorized functions no matter when they are incurred. Thus the appropriation for "Official Mail Costs" once paid to the fund is available for payment of expenses of the Postal Service no matter when they were incurred.

We also note that 39 U.S.C. § 410(a) provides that Federal laws "dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds" do not apply to the exercise of powers by the Postal Service unless as provided by 39 U.S.C. § 410(b) or some other provisions of title 39, U.S.C. The Antideficiency Act is not one of the laws listed in 39 U.S.C. § 410(b). No other provision of title 39, U.S.C. expressly makes the Antideficiency Act applicable to the Postal Service.

Thus it is clear that the Antideficiency Act is inapplicable to the Postal Service when billing Congress for handling franked mail.

THE CHEROKEE NATIONAL FOREST

● Mr. SASSER. Mr. President, in the months ahead, the Forest Service will near completion of over 100 plans for the management of 191 million acres of national forest land. The direction and emphasis established in these plans will have profound and far-reaching implications for the future of our public land resources. Congress has an obligation to ensure that each and every one of these plans upholds the highest and best uses for our national forest resources. I am therefore voicing my concern over the poor and imprudent planning by the U.S. Forest Service in the final plan for the Cherokee National Forest in Tennessee.

Last December, I expressed my concerns regarding the proposed final plan for the Cherokee National Forest. I urged the Forest Service then, as I had earlier in the planning process, to redirect the plan's emphasis from the single commodity management of timber to multiple use management. My urging, however, appears to have gone unheeded. The final plan, released by the Forest Service in April, leaves me no more convinced now than I was last December that the plan represents a balanced approach to forest management in the Cherokee National Forest.

Certainly, Mr. President, the final plan is an improvement over the draft plan. In particular, I am very pleased to see that the acreage recommended for either wilderness or wilderness study designation has been increased from 22,214 acres in the draft to 33,735 acres in the final plan. The Forest Service is to be commended for this and other significant changes in the final plan that reflect the concerns voiced during the public comment period.

However, the improvements to the plan are still inadequate in several regards.

The final plan calls for the almost exclusive use of clearcutting on the 61 percent of the forest that will be open to timber harvesting. In fact, less than 4 percent of the timber harvested will be done using any other harvesting method. Practically speaking, this means that over 2,000 acres of the Cherokee National Forest will be clearcut annually.

In justifying such heavy reliance on clearcutting, the Forest Service has said that clearcutting is the optimum method for managing Southern Appalachian forests. While clearcutting may be the Forest Service's optimum method, other Southern forest plans, such as the plans for the Chattahoochee National Forest in Georgia and the Pisgah-Nantahala National Forest in North Carolina, suggest it need not be as extensive as proposed for the Cherokee. In addition, while there may be a common acknowledgement of clearcutting's optimum value for timber management, there is no such consensus on its benefits in multiple use resource management.

The obvious aesthetic impact is only one of the criticisms of clearcutting. The negative impact of clearcutting on diverse biological species and wildlife habitats in the forest is another concern. For example, clearcutting of hardwood stands has been shown in certain areas to cause the conversion of hardwoods to pine monocultures. Clearcutting is also thought to reduce the food and den site availability to black bears. Given these and other impacts, I am troubled to see the Forest Service's blanket justification for clearcutting in the Cherokee. Indeed, there are numerous areas where an alternative harvesting method, such as shelterwood cutting, selective cutting, or group selection, would be a more desirable approach.

Mr. President, I am troubled that the Cherokee management plan continues the practice of selling timber below cost. The Forest Service in recent years has lost 62 cents for every dollar spent on timber management in the Cherokee. This amounts to annual losses from timber sales on the Cherokee National Forest alone of over $2 million. Yet, the final plan for the Cherokee continues this annual deficit by maintaining current timber harvest levels of 40 million metric board feet annually for the next 10 years.

This use of below cost timber sales is not exclusive to the Cherokee National Forest. According to the administration's own fiscal year 1987 budget request, the Forest Service's costs for timber and mineral activities nationally exceeded the Federal share of timber and mineral receipts in 1985 by $621 million. I would like to insert into the RECORD at the conclusion of my remarks an excellent article from the Wall Street Journal on April 18, 1986, that calls attention to this practice of below cost timber sales.

The final plan for the Cherokee National Forest should call for a gradual phaseout of timber sales below cost, except in site-specific instances where such sales would clearly yield noncommodity benefits. Such a phaseout would encourage the Forest Service to determine a long-term economically positive timber harvest level as well as reduce the proposed timber harvest volumes and the proposed road construction mileage in the final plan. An end to below cost timber sales would allow the $2 million annual timber subsidy on the Cherokee to be more wisely spent elsewhere in the forest. Trail construction, land acquisition, campground maintenance, and other resource protection measures that have been continually jeopardized by the Forest Service's timber management priorities would receive much needed attention.

Mr. President, in order to further enhance my understanding of what is at stake in this forest planning process, I plan to visit the Cherokee National Forest in the near future. I intend to get a firsthand look at the use of clearcutting and other Forest Service management practices. I also intend to meet with both Forest Service personnel and representatives of the five organizations that have recently appealed the final plan, so that I might have a better idea of where we should go from here.

The Cherokee National Forest is a magnificent natural resource with abundant recreational and resource potential. It is already among the top 20 most visited of the 155 national forests, with over 2.5 million visitors annually. In light of this, it seems imprudent of the Forest Service to advocate a final plan that emphasizes single commodity exploitation over stewardship activities. Additional emphasis can and must be directed toward tapping the tremendous scenic and recreational potential of the Cherokee National Forest. In the months ahead, I will work to ensure that the public's investment in our national forest lands is preserved to the fullest degree.

The article follows:

[From the Wall Street Journal, Apr. 18, 1986]

FOREST SERVICE'S SALES OF TIMBER BELOW COST STIR INCREASING DEBATE

(By Ken Slocum)

McCALL, IDAHO.—Ron Mitchell vividly recalls camping as a youngster at Poverty Flat Hole on the South Fork of the Salmon River near here and seeing the pool bottom black with migrating Chinook salmon up to 16 pounds.

But that was before 1965 when, under heavy rains, the mountainsides, scored by Forest Service roads, crumbled into the South Fork. It is regarded as one of the nation's worst wildlife disasters. This key spawning area for salmon migrating from the Pacific was turned into what one Senate witness termed "a river of sand."

Some 20 years later, with the fishing season still closed and the South Fork salmon population at minimum survival levels, Mr. Mitchell and others are fighting the Forest Service's plan to harvest logs on more hillsides above the South Fork.

What particularly galls them is that, by the agency's own figures, after it builds more roads into the area and sees to other details of the sale, revenue from the trees won't cover costs and taxpayers will be out some $2 million. "It's subsidized destruction," Mr. Mitchell fumes. "It's outrageous."

RALLYING CRY

The government's below-cost timber sales have become a rallying cry for environmental groups and sportsmen. Increasingly, the sales are being challenged as a subsidy that floods the market and depresses prices, hurting private timber growers and some producers of specialized wood products. Some people consider the sales a basic cause of a fundamental reshaping of the whole timber industry.

Much of the timber cut in the nation's 191 million acres of national forest, in fact, is

sold at a loss. An analysis of four Western regions by the General Accounting Office showed that 42% of Forest Service timber sales in 1982 didn't generate enough revenue to cover costs, costing taxpayers $92 million.

In two regions of the Rocky Mountains, over 96% of the sales didn't cover costs, the GAO found. Some sales apparently didn't even come close. Harvests in the Monongahela National Forest in West Virginia returned only 25 cents on every dollar spent, and harvests in the Beaverhead National Forest in Montana returned only 32 cents, according to an analysis of 1979–84 sales by the Wilderness Society. Wyoming's Bighorn National Park recovered a mere 21 cents on the dollar.

Bjorn Dahl, special-projects forester on policy analysis for the Forest Service, calls the figures inaccurate. He is working on an accounting system ordered by Congress to determine costs and revenues of timber sales.

AN OVERALL PROFIT

Overall, the Forest Service does make a profit on timber harvesting, with three-fourths of timber values coming from just one-third of the national forests, on the Pacific Coast. Below-cost sales are most common in the Rocky Mountains, where low rainfall, rugged slopes and unstable soils make lumbering the most difficult and expensive and where the damage to the winds is the greatest.

Lost taxpayer dollars aren't the main concern of environmentalists and sportsmen. "We're not the economic conscience of the country—we object to a lot of profitable timber sales, too," says Thomas Dougherty, a regional director for the National Wildlife Federation. "But when they plunder the wilderness and taxpayers have to shell out for it, you know there's a rat in the woodpile."

For its part, the Forest Service contends it is doing its job, which is to consider water quality, wildlife and recreation as well as the timber harvests. "With the financial resources we have to work with, we think we do the best possible job," says Robert D. Nelson, the director of Wildlife and Fisheries for the Forest Service.

Officials also contend that timber receipts don't accurately reflect the benefits. "Once we harvest an area, water flows, wildlife comes in and we develop a future investment of timber resource," says Mr. Dahl, the policy analyst. "The timber sale may lose money, but these other benefits aren't reflected."

ANOTHER VIEW

But what the Forest Service sees as a benefit is often viewed as a disaster by other experts. In the Bitterroot National Forest of Montana, for instance, Montana game officials are backing the National Wildlife Federation and another environmental group, The Defenders of Wildlife, in their efforts to stop a Forest Service timber sale along Tolan Creek in the southwest corner of the state.

The Forest Service offered timber from the area, some 9,400 acres of virgin, rugged mountainside, for sale in 1976, but lumber companies declined to bid on it. Then the Forest Service spent $312,000 of federally appropriated funds to break a 10-mile road into the wilderness to make it more attractive to lumber companies.

Besides providing access to the salable timber, the road will help in the removal of downed timber that fuels forest fires and will help the service in culling out trees susceptable to the mountain pine beetle, according to Robert Morgan, the supervisor of Bitterroot Forest. The Forest Service estimates that even after the government absorbs the cost of that road, timber receipts will fall $167,000 short of costs to build additional roads and to administer the sales.

But wildlife experts vigorously reject contentions that the Forest Service can harvest lumber in the wilderness without harming wildlife, particularly elk. "The Forest Service says the cut would benefit elk by providing more forage in the area," says John Firebaugh, the regional wildlife manager for Montana Fish, Wildlife and Parks. "Our position is there's adequate forage there now. The limiting factor for elk there is security—a place to hide from hunters."

Environmentalists and sportsmen are getting some outside support, particularly from small private growers. "All we ask for as small woodland owners is a chance to compete fairly," says Keith Argow, the president of National Woodland Owners Association, a federation of small growers. "We can't compete fairly when you've got this timber being subsidized one way or another." He says small growers, poorly organized, are finally banding together and one of their targets is the below-cost sales.

Small private timber owners (as contrasted with major land-owning timber companies) hold 58.4% of U.S. commercial timberland but produce less than half of harvested timber. Environmentalists would like to see more of the market shifted to private owners, with the national forests increasing their use to meet the rise of recreational needs.

Supporting this idea is Randal O'Toole, forest economist of Cascade Holistic Economic Consultants, a company frequently hired by civic or environmental groups to analyze figures used by the Forest Service to support timber sales. "The opportunity is there for private timber growers," he says. "If the Forest Service would phase out its subsidies, private owners would see prices go up and they would invest in their land instead of letting it lie idle."

But big lumber companies that buy sizable proportions of their lumber supplies from national forests argue that that isn't all that would happen. "If below-cost sales were banned tomorrow, timber supplies would decrease and prices would increase," argues Robert Morris, the resource manager for Louisiana-Pacific Corp., which buys about 27% of its supplies from the national forests. "Then, with increased prices, the American producer would be less competitive, and the Canadians would take a bigger share of the market than the 35% to 38% they have now." He adds, "We're no longer in a regional market, and a consumer in Los Angeles doesn't care whether he buys a two-by-four produced in Canada or the U.S."

Below-cost sales also draw fire from some officials of the specialty side of lumber products. Boise-based Trus Joist Corp. says that as a producer of laminated construction trusses it is the biggest purchaser of high-strength structural timber in the country. Walter C. Minnick, the president, says that because of a growing oversupply of wood fiber, at least partly as a result of below-cost sales, wood fiber is priced at half the 1979 levels, after allowing for inflation. This obviously benefits Trus Joist in its raw-material costs.

But overall, the company is hurt, Mr. Minnick says. "The whole effort . . . among manufacturers of products made from wood is to develop engineered products to do a given structural job with less wood," he says. "But when wood is artificially cheap, the incentives are diminished. By retarding our technological development, we impede our ability to compete internationally."

Clearly, environmentalists' attacks and public resistance are slowing the pace of below-cost sales in the nation's forests. "There's been some shift by the Forest Service, but we haven't yet stanched the tide of below-cost sales," asserts Henry Fischer, a Rocky Mountain field representative.

THE MEN AND WOMEN OF OUR ARMED FORCES

● Mr. GOLDWATER. Mr. President, for several years now, I have been saying that the young officers and enlisted men and women of our armed services are dedicated, loyal, and hard working people. The overwhelming majority of these people are willing and able to make personal sacrifices for the betterment of their unit and their country. These young people are the first line of defense whenever and wherever our country may need them, and they are up to any task which may be imposed upon them.

Recently, a very good friend of mine received a letter from one of these young soldiers which exemplifies the loyalty, dedication, concern, and hard work which instills pride in themselves and pride in us for having such capable people. In reading this letter, I could not help but be struck by the fact that if our country is to succeed in maintaining its position as the "Bastion of Freedom," then we surely have cause for hope. I cannot tell you in words the feelings that this letter aroused in me. Just to be able to be a small part of this soldier's feelings, hopes, and aspirations has given me a sense of mission accomplished.

Mr. President, in order that all of my colleagues and everyone else interested in the welfare and morale of our troops may understand the perspectives of our young service men and women, I ask that the letter be printed in the RECORD.

The letter follows:

APRIL 9, 1986.

DEAR GENERAL: It's hard to believe that a year has passed since you were kind enough to travel down to Fort Benning and honor us with your presence at our One Station Unit Training graduation.

In that year, many good things have happened for our soldiers and the 4th Battalion. The Buffalo's have, in Major General Harrison's words, "done everything I've asked of them and more, and done it all well." In so doing, I am proud to report to you that I truly believe we have lived up to these expectations you charged us with one year ago—to tell the truth no matter the situation, to show courage in every action we undertook, for the good of the Regiment.

In the year, we have:

Taken ARTEPS from battalion down to squad level, and done well in them all.

Afforded our soldiers with the 118 MOS the opportunity of earning the Expert Infantryman's Badge, and 143 of them did.

Led the 7th Infantry Division (Light) in MOS testing, thus affording our NCO's with increased opportunities for promotion.

Participated in Operation Celtic Cross III in August, 1985 successfully, with the distinction of conducting difficult missions for the Division when only 4½ months in being.

Conducting the first Division EDRE (Emergency Deployment Readiness Exercise) for a company-sized unit under the light division concept.

Winning the Commanding General's Marksmanship Award (The Stilwell Cup) for being the finest shooting battalion with combined scores on the M-16, M-60M1 and .45 caliber pistol.

Setting the standard for the Division with a Personal Actions Center (PAC) that truly leads the Division in areas of soldier care and concern such as EER's and personnel assistance.

Made the soldiers of the Buffalo battalion proud of themselves and their unit, and, in so doing, hopefully letting them see, firsthand, that in the Army you truly can "be all that you can be." Thus, it has been a great and wonderful year for me and, I pray, for the vast majority of our soldiers in the Battalion.

As you can see from the return address, we are now in Panama for the Army's three week Jungle Operations Training Center program of instruction. We brought along with us, with 3d Brigade's blessing, our entire combat slice of artillerymen, air defenders, MPs, engineers, medics and other branches that comprise a "go to war" task force.

The soldiers are literally eating the training up, and are doing very well. This is our first OCONUS deployment, so for many it is their first trip to a foreign country. We're trying to balance tough, realistic training with the opportunity to learn about not only a historic locale for Americans (we're only 6 miles from Gatun Lake and the Panama Canal) but also to learn about a region that is obviously of increasing importance to the United States. I think we are succeeding.

In rereading, this letter sounds way too much like an ego building trip for me. I really do not mean for it to be. What I really want to leave you with is the thought that the soldiers are proud and truly capable, their leadership dedicated and professional, and that I think you would feel right at home with the Buffalo Battalion.

My best wishes to your wife. Please keep us in your thoughts, and know that we are doing our best for the Army and our country.

Sincerely.●

NATIONAL HISTORIC PRESERVATION WEEK

● Mr. DOMENICI. Mr. President, the week of May 11 to 17 marks the 14th annual National Historic Preservation Week. But this year's celebration is particularly significant because it coincides with the 20th anniversary of 1966 National Historic Preservation Act, creating the National Historic Preservation Fund. This law will be up for reauthorization next year, and so I think this is a good time to reflect upon the idea of historic preservation and the need to continue our efforts in this area.

In 1965, the Special Committee on Historic Preservation made some recommendations which have served as an inspiration for States to establish their individual historic preservation programs. The committee stated: "If we wish to have a future with greater meaning, we must concern ourselves not only with the historic highlights, but we must be concerned with the total heritage of the Nation and all that is worth preserving from our past as a living part of the present." There is so much truth to these words. They make me appreciate the importance of preserving as much of our past as we can.

Appropriately enough, the theme for this year's program is "Celebrate Historic Places, Our Past for Our Future."

In New Mexico, we are fortunate to have a culturally rich and diverse history. We have a combination of the Indian, Spanish, and Anglo cultures. I'm proud to say that New Mexico's historic preservation program is one of the most active in the United States, and I have strongly supported its countless and ongoing renovation and restoration projects. Both Federal and State tax credits for historic preservation have been invaluable in this regard.

One of New Mexico's richest historical treasures are its mission churches, which exemplify the mixture of Spanish and Indian cultures and styles. Our State's historic preservation program, in cooperation with citizens and the Archdiocese of Santa Fe, has been involved in the identification, analysis, restoration, and maintenance of historic churches, specifically the San Francisco de Asisi Church in Ranchos de Taos and the San Jose de Gracia Church in Las Trampas. In fact, it was just a few weeks ago that dozens of parishioners and volunteers joined together to replaster and remud the adobe structure of the San Jose de Gracia Church, which is a national historic landmark.

Another of our State's treasures are its prehistoric Indian petroglyphs. In Albuquerque, more than 10,000 petroglyphs have been fully identified, and there are plans for protection of this resource.

In Las Vegas, San Miguel County, new life and vitality has been brought to its downtown area as a result of the La Plaza Vieja redevelopment effort to redevelop 19 historic buildings for retail and office tenants. The saving of these buildings mean new businesses and jobs for Las Vegas and will increase the town's appeal as a tourist attraction.

In Rio Arriba County, near the town of Velarde, another of New Mexico's most important examples of its culture and heritage is nearly complete—the reparation of the 200-year-old acequias irrigation system. The acequias have been a lifeline for generations of New Mexicans around Velarde for as far back as the 1700's, and farmers depend on them just as much now as they did then. In 1983, I worked to include the initial funding for this project as part of the Energy and Water Appropriation Act.

Almost anywhere you travel in New Mexico there are efforts to preserve its history. Increasingly, there is a real understanding that we must keep a little piece of the past—that we must maintain our sense of identity if we are to move on into the future. In fact, in towns like Las Vegas, it is evident that preserving our heritage can actually be a catalyst for the future growth of our communities.

We in the Land of Enchantment feel a tremendous sense of pride and joy in our tricultural heritage, and I commend New Mexicans for their dedication to preserving it.●

NAUM AND INNA MEIMAN

● Mr. SIMON. Mr. President, I was honored to be able to participate in this morning's reception in honor of a man whose courage is matched by few, Natan Shcharansky. Mr. Shcharansky demonstrated his wit and his eloquence and proved himself to be the hero that he has been called.

Mr. Shcharansky was a founding member of the Helsinki Watch Group, along with my friend, Naum Meiman of Moscow. As gratifying as it was to see Mr. Shcharansky a free man, I am gravely concerned about the fate of Naum and his wife, Inna, who are still held in the Soviet Union.

Naum and Inna deserve to live the remainder of their lives in Israel. As human beings, we must all have the choice of where we wish to reside.

I strongly encourage the Soviets to allow Inna and Naum to emigrate to Israel.●

THE PRODUCT LIABILITY VOLUNTARY CLAIMS AND UNIFORM STANDARDS ACT

● Mr. DODD. Mr. President, today I am delighted to join Senator DANFORTH in the introduction of a product liability amendment that I think will eliminate the major differences between consumers and businesses and enable us to take a productive step toward solving the product liability crisis.

While this new paragraph moves away from the creation of a new standard for the recovery of lower damages—which was included in both my original product liability amendment and in Senator DANFORTH's bill, S. 1999—it adopts an approach that

should be beneficial for both consumers and businesses.

The incentives to settle in this amendment, particularly in serious injury cases, are so strong that businesses should be encouraged to settle in both open and shut cases and in cases that are near the margin. At the same time, since the bill does not change basic State standards for recovery, businesses that sincerely doubt the legitimacy of a claim would be able to contest such a claim. The greater inducements for rapid settlements for net economic loss plus pain and suffering in serious and permanent injury cases should dramatically reduce the time between injury and compensation and provide for similar compensation for similarly injured people. Moreover, speedier settlements should reduce the huge transaction costs that plague the present system, on both the plaintiff's and defendant's sides.

For businesses, the bill assures them that if they are willing to settle a case, they will be able to do so for net economic loss plus a maximum of $250,000 in very serious injury cases. Moreover, an offering business would be jointly liable only for the claimant's net economic loss and not for pain and suffering that liability would be limited to the business' proportionate contribution.

Mr. President, this bill is not perfect. Not surprisingly, I would prefer to have followed the path of my original legislation, but as I've said time and time again, we must not let the perfect be the enemy of the good. I think this amendment represents a major step forward in product liability law, one that will help both consumers and businesses, and I heartily endorse it.●

CONTRIBUTIONS OF MR. LEONARD LONDON

● Mr. LAUTENBERG. Mr. President, I would like to bring to my colleagues' attention the outstanding contributions of Mr. Leonard London, a dedicated and active member of the New Milford community in New Jersey. On May 18, the New Milford Jewish Center will honor Mr. London for his unparalleled service to the New Milford Jewish Center, the Jewish community in general, and to the town of New Milford.

Mr. London has demonstrated rare and admirable dedication to the Jewish community in New Milford through his many years of service to the New Milford Jewish Center. He has served a series of terms on the board of directors and has served two terms as its president. He has also chaired the New Milford Jewish Center's Board of Education as well as its youth groups.

Mr. London's hard work and dedication have benefited all those who use the facilities of the New Milford Jewish Center. His efforts have enhanced the synagogue as well as the religious school. And his hard work has benefited both the youth and elderly who participate in the multitude of programs offered at the community center.

But Mr. London has done more than serve and strengthen the Jewish community in New Milford. He has dedicated nearly 20 years of his life to the U.S. military. He has served one term on the board of the Borough of New Milford, and he ran the New Milford Blood Program for 5 years. Currently, he is a member of the zoning board for the Borough of New Milford as well as a member of the auxiliary police force.

It is fitting that Mr. London receive this great honor from the New Milford Jewish Center. Through his many years of service to the New Milford Jewish Center, Mr. London has demonstrated a deep understanding of how important it is to take responsibility for strengthening one's community. And through his active participation in the town of New Milford, Leonard London has shown time and again how important it is for citizens to bring their values to bear the community at large. Mr. London's dedication to the town of New Milford is a fine example for all of us to follow.●

ORDERS FOR TOMORROW

RECESS UNTIL 9 A.M.

Mr. HATCH. Mr. President, I ask unanimous consent that once the Senate completes its business today it stand in recess until 9 a.m. on Wednesday, May 14, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF CERTAIN SENATORS

Mr. HATCH. Mr. President, following the recognition of the two leaders under the standing order, I ask unanimous consent that the following Senators be recognized for not to exceed 5 minutes each for special orders: Senators BYRD, HAWKINS, CRANSTON, WILSON, GORE, SASSER, BIDEN, and PROXMIRE.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. HATCH. Following the special orders just identified, I ask unanimous consent there be a period for the transaction of routine morning business not to extend beyond 10 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. HATCH. Mr. President, at 10 a.m., the Senate will resume consideration of S. 1848, the drug export bill. By previous unanimous-consent agreement, final passage must occur prior to 2 p.m. Therefore, votes will occur throughout the day on Wednesday. Following the disposition of S. 1848, the drug export bill, it will be the majority leader's intention to turn to Calendar No. 638, S. 2395, the military uniformed services retirement bill.

Mr. President, I ask unanimous consent that after the Senate resumes consideration of S. 1848, the drug export bill, a final passage vote occur no later than 2 p.m.

Mr. BYRD. Mr. President, there is no objection to this request. I thank the distinguished acting Republican leader, and I am sorry that I was off the floor and caused him to delay. I thank him. As to the 5 minutes, I do not need it for myself but I want a cushion to give time to any Senator on either side who might like to have it. I thank the distinguished Senator. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 1700

RECESS UNTIL 9 A.M. TOMORROW

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate stand in recess in accordance with the previous order.

There being no objection, at 6:54 p.m., the Senate recessed until tomorrow, Wednesday, May 14, 1986, at 9 a.m.